# PROPOSAL TO CONVERT NATIONAL GUARD CIVILIAN TECHNICIANS FROM EXCEPTED TO COMPETITIVE STATUS AND H.R. 4884, TO GRANT COMPETITIVE STATUS TO CERTAIN FBI PERSONNEL



# HEARING

BEFORE THE

SUBCOMMITTEE ON THE CIVIL SERVICE

OF THE

COMMITTEE ON
POST OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

AUGUST 3, 1994

## Serial No. 103–53

Printed for the use of the Committee on Post Office and Civil Service

U.S. GOVERNMENT PRINTING OFFICE

83–193 WASHINGTON : 1994

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-046427-7

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AUGUST 3, 1994

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**WEDNESDAY, AUGUST 3, 1994**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CIVIL SERVICE,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
*Washington, DC.*

The subcommittee met, pursuant to call, at 10 a.m., in room 311, Cannon House Office Building, Hon. Frank McCloskey (chairman of the subcommittee) presiding.

Member present: Representative Morella.

Members also present: Representatives Norton and Young.

Mr. MCCLOSKEY. The hearing will come to order. I am Congressman Frank McCloskey, chairman of the Civil Service Subcommittee. I want to welcome all our witnesses today. Today the Subcommittee on Civil Service will hold a hearing on the divisive issue of whether or not the existing National Guard technician structure should be reformed.

There are many issues involved, including whether Guard technicians should be allowed to enter competitive civil service, also whether the personnel appellate process needs to be reformed, and how should the unique Federal nature of the National Guard create distinctions for Guard technicians as compared to Reserve technicians.

My good friend and colleague, Mr. Bonior, offered an amendment on September 13 of last year to grant National Guard technicians competitive status in the civil service. Mr. Bonior will be here shortly. He also will be testifying.

During the debate on this amendment, there was considerable confusion as to what the Bonior amendment would or would not do. I opposed the Bonior amendment last year because this subcommittee had not had hearings on this matter since 1986, and given the confusion as to what impact the Bonior amendment would have had, it seemed prudent to have a hearing to examine this policy.

In 1986 Congresswoman Pat Schroeder, who was then Chair of this subcommittee, held a hearing on this issue. At that time, there appeared to be a willingness to grant National Guard technicians who are involuntarily separated from the Guard competitive civil service status to pursue other Federal employment.

There was opposition also to allowing the technicians the authority to voluntarily seek competitive civil service status. It appears many of the questions raised in that hearing still resonate.

I greatly hope to facilitate dialogue at this hearing and to have witnesses address some of the concerns raised by their counterparts. There have been serious defense readiness and also basic fairness questions raised.

Rather than necessarily focusing on specific legislation, it would be helpful to concentrate on broad policy issues. I especially want the witnesses to answer the following questions as they summarize their testimony. I would ask that the basic testimony be completed in five minutes more or less. The full statements, of course, will be accepted for the record.

Would conversion of technicians to civil service status have a detrimental impact on defense readiness? Is the current system of personnel administration fair for technicians? If not, why not, and what should be done to reform it?

There are many collateral questions, including whether any changes would impact the requirement that technicians wear a uniform, whether out-of-State technicians could bid on jobs and be selected over in-State residents if the technicians are converted to competitive status, and also whether it is constitutional to change the current State-Federal balance established by the National Guard Technicians Act of 1968.

Quite frankly, I am hopeful that today's hearings will identify the salient policy issues and the factual disagreements between the various interested parties. I want to thank everyone again. I don't believe Mr. Bonior or Mr. Young or Mr. Williams, any of the three are here, so I think we can start with the DOD panel, Francis M. Rush, Jr., Deputy Assistant Secretary for Manpower and Personnel, and if you will introduce your distinguished military colleague there, Mr. Rush, we can proceed.

[The prepared statement of Hon. Frank McCloskey follows:]

PREPARED STATEMENT OF HON. FRANK MCCLOSKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Today the Subcommittee on Civil Service will hold a hearing on the divisive issue of whether or not the existing National Guard technician structure should be reformed.

There are many issues involved including whether Guard technicians should be allowed to enter competitive civil service; whether the personnel appellate process need to be reformed; and how should the unique Federal nature of the National Guard create distinctions for Guard technicians as compared to Reserve technicians.

My good friend and colleague, Mr. Bonior offered an amendment on September 13 of last year to grant National Guard technicians competitive status in the civil service.

During the debate on this amendment there was considerable confusion as to what the Bonior amendment would or would not do. I opposed the Bonior amendment last year because this subcommittee had not had hearings on this matter since 1986 and given the confusion as to what impact the Bonior amendment would have had, it seemed prudent to have a hearing to examine this policy.

In 1986, Congresswoman Pat Schroeder who was then chair of this subcommittee, held a hearing on this issue. At that time there appeared to be a willingness to grant National Guard technicians who are involuntarily separated from the Guard competitive civil service status to pursue other Federal employment.

There was opposition to allowing the technicians the authority to voluntarily seek competitive civil service status. It appears many of the questions raised in that hearing still resonate.

I greatly hope to facilitate dialog at this hearing and to have witnesses to the degree possible address some of the concerns raised by their counterparts. There have been serious defense readiness and basic fairness questions raised.

Rather than necessarily focussing on specific legislation, I believe we should examine broad policy issues.

I especially want the witnesses to answer the following questions as they summarize their testimony:

Would conversion of technicians to civil service status have a detrimental impact on defense readiness?

Is the current system of personnel administration fair for technicians? If not, why not, and what should be done as a reform?

There are many collateral questions including whether any changes would impact on the technicians' requirements to wear a uniform, whether out-of-State technicians converted to competitive status, and whether it is constitutional to change the current State-Federal balance established in the National Guard Technicians Act of 1968.

Quite frankly, I am hopeful that today's hearings will identify the salient policy issues and the factual disagreements between various interested parties.

I wish to thank all of our witnesses for testifying today.

## STATEMENT OF FRANCIS M. RUSH, JR., DEPUTY ASSISTANT SECRETARY, MANPOWER AND PERSONNEL, DEPARTMENT OF DEFENSE, ACCOMPANIED BY MAJOR GENERAL D'ARAUJO, ACTING CHIEF OF THE NATIONAL GUARD BUREAU AND DIRECTOR OF THE ARMY NATIONAL GUARD

Mr. RUSH. Thank you, Mr. Chairman. We appreciate the opportunity to appear before the committee on this important issue. Major General D'Araujo, the Acting Chief of the National Guard Bureau and Director of the Army National Guard, is with me this morning.

As you know, Mr. Chairman, the National Guard technicians serve as a unique class of Federal employees under section 709 of title 32 of the United States Code, employed by the State Adjutants General. These positions are outside of the competitive service. The technician is required as a condition of employment to be a member of the National Guard and hold the military grade specified for that position.

The National Guard technicians are a critical element of the readiness of the Army and the Air National Guard, comprising 60 percent of the full-time military support for the Army Guard and 70 percent for the Air Guard. The National Guard Technician Act of 1968 provides the basis for today's technician program in the Guard, and the objective of that legislation was to provide retirement and benefits programs on a uniform national basis for technicians.

The concept was that the technician would perform full-time civilian work in their unit, military training and duty in their unit, and be ready to act in military service when called. The Department of Defense view is that it is the military status of the technician that is paramount and the Department is opposed to any legislation that would undermine the readiness by deemphasizing the military nature of the National Guard technician program.

It was recognition of the unique military requirements and State characteristics of the National Guard that prompted Congress to exempt National Guard technicians from the provisions of title 5. Competitive service status for National Guard military technicians would significantly impact on this authority and correspondingly

adversely impact mobilization capabilities and weaken discipline and esprit de corps.

Bringing technicians into the competitive service in our view is not in the best interest of the effectiveness and the vitality of the military technician program. I would note that the National Guard Bureau has established adverse action procedures which grant technicians considerable due process rights, and this process protects the individual from arbitrary or capricious action while retaining the Adjutant General as a final authority and the individual responsible for management of the State National Guard.

In summary, Mr. Chairman, the 1968 act was a carefully constructed compromise which balanced interests of National Guard military technicians with military requirements and the constitutional prerogatives of the States. The experience of the last quarter century shows the program has worked well in line with the intentions of the Congress, and in response to your questions, the Department does believe that the system is fair and does believe that the standards for employment of technicians should be first their military performance and secondly their seniority in the technician program.

Mr. MCCLOSKEY. Thank you very much, Mr. Rush.

[The prepared statement of Mr. Rush follows:]

PREPARED STATEMENT OF FRANCIS M. RUSH, JR., DEPUTY ASSISTANT SECRETARY, MANPOWER AND PERSONNEL, DEPARTMENT OF DEFENSE

Mr. Chairman and members of the subcommittee: It is a pleasure for me to appear before this committee to present the testimony on the status of National Guard military technicians. I am accompanied this morning by Major General D'Araujo, Acting Chief of the National Guard Bureau.

As you know, National Guard technicians serve as a unique class of federal employees under section 709 of title 32, United States Code, employed by the state adjutants general for the purpose of administration and training of the National Guard and maintenance and repair of supplies and equipment issued to the National Guard or the armed forces. These positions are outside the competitive service if the technician is required, as a condition of employment, to be a member of the National Guard and hold the military grade specified for that position.

The National Guard technicians are a critical element of the full-time support programs of the Army National Guard and the Air National Guard. The objective of full-time support programs in the Department of Defense is to enhance the readiness of reserve forces, and this program is largely responsible for enabling these forces to perform the expanded missions they have been assigned under the Total Force policy. The cadre of military technicians plays an especially important role in providing support at unit level. Nearly 60 percent of the full-time support in the Army National Guard is provided by military technicians. In the Air National Guard, military technicians provide 70 percent of full-time support. The military technician force is critically important to the readiness of the National Guard and hence to the Army and the Air Force.

The National Guard Technician Act of 1968 provides the basis for today's military technician program in the National Guard. The objective of that legislation was to provide retirement and benefits programs on a uniform national basis for technicians. The concept of the Technician Program under the Act that the technicians will serve concurrently in three different ways: (a) perform full-time civilian work in their units; (b) perform military training and duty in their units; and (c) be available to enter active Federal service at any time their units are called. It is the military status of the technician that is paramount. Unlike typical civil service employees, technicians are required to be active members of the National Guard; required to be promptly terminated upon loss of their military membership for any reason; required to be in compatible military and technician assignments and required to be available for mobilization with their National Guard units.

The DOD is opposed to any legislation that would undermine the readiness of the Army and Air National Guard by deemphasizing the military nature of the technician program. We are also concerned that such legislation would infringe on the au-

thority of the states to train the militia. It was recognition of the unique military requirements and state characteristics of the National Guard that prompted Congress to exempt the military technicians from various provisions of title 5, United States Code. The present law is a delicate balance of state and federal authority that has worked well and should not be disturbed.

National Guard technicians are appointed, employed and managed by a state official, the Adjutant General, who is the final appeal authority for adverse actions. Technicians are specifically excluded by section 709 of title 32, United States Code, from application of parts of title 5 of the code, such as veterans preference provisions and reduction in force procedures. The provisions of title 5 made inapplicable were those deemed necessary to accommodate the overriding military requirements of the technicians' employment and to assure management control at the state level by the Adjutant General.

Competitive service status for National Guard military technicians, coupled with the repeal of certain provisions of section 709 of title 32, would significantly impact the authority of the Adjutant General, adversely impact mobilization capabilities and weaken discipline and esprit de corps. Bringing technicians into the competitive service is not in the best interest of the military technician program for the following reasons:

(a) It would erode the Adjutants General control of the military technician program uniquely designed to serve the needs of both the states and the Federal government by providing appeal rights to the Merit Systems Protection Board. Legislation that would grant technicians adverse action appeal rights beyond the Adjutant General of the jurisdiction concerned would remove one of the pillars upon which the National Guard technician program was constructed. This would dilute the command and management authority of the official responsible for the training and readiness of the National Guard of each state and thus could significantly diminish the Guard's readiness and mobilization capability.

(b) It would impose certification and qualification requirements for employment in the technician program identical to those established by title 5 of the United States Code which would eliminate many of our drilling Guard personnel from employment due to lack of creditable experience. Most occupations require several years of experience to qualify. Drilling National Guard personnel who attend three to four month military school and then train one weekend a month and serve a two week tour each year would not qualify for employment for many years. Thus, the National Guard's principal recruiting source would be diminished.

(c) It would make Reduction-in-Force [RIF] rules applicable to the technician program. The application of RIF rules would be adverse to the National Guard. The National Guard system best guarantees a vital force by basing retention on both performance and seniority.

The National Guard Bureau has established adverse action procedures which grant technicians considerable due process rights. The procedures stated in regulations provide technicians with the right to an advance written notice of proposed actions, as well as reasons for the action and opportunity to review the material which forms the basis for the proposed action. Technicians are granted the opportunity to answer the charges and appeal any final adverse action taken to a higher management official than the one who proposed the original action. On the appeal the decision is subject to further review through an administrative hearing process which provides the technicians an opportunity to present witnesses, and to cross-examine agency witnesses. Based upon a report of findings and recommendations developed by the hearing examiner, the Adjutant General issues a final decision. The hearing Examiner process protects the individual from arbitrary or capricious action while retaining the Adjutant General as the final authority and the individual responsible for management of the State National Guard. Judicial review of those state actions is available to aggrieved technicians in many cases. Appeals of state actions to federal courts would not appear to raise the troubling constitutional concerns that could be implicated by appeals to Federal administrative agencies.

In summary, Mr. Chairman, the Department of Defense is opposed to legislation that would grant technicians adverse appeal rights beyond the Adjutant General of the jurisdiction concerned. The National Guard Technicians Act, Public Law 90–486 of 1968, is a carefully constructed compromise which balances the interests of the technicians with the military requirements and constitutional prerogatives of the states. The experience of the last 25 years shows that the program has worked well and as it was intended by the Congress when it enacted this Law. Traditional civil service rules which were developed for application in a Federal civil service arena cannot reasonably be expected to have practicable application in what is principally a military arena serving concurrently in a federal/state relationship. Congress granted technicians Federal employee status on the condition that the state retain

the military controls which they had prior to the Act. These were explicitly stated in section 709(e)(1)–(5) of title 32. Courts have recognized and approved the compromise nature of the legislation. Proposing new legislation to remove these state characteristics of the National Guard would destroy the balance and the purpose of the Technician Act.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK MCCLOSKEY TO FRANCIS M. RUSH, JR.

*Question 1.* You indicate that DoD is opposed to any legislation that would undermine the readiness of the National Guard. How exactly would giving the National Guard Technicians MSPB appeal rights undermine readiness? Please give real world examples.

Answer. The military technicians of the National Guard are, first and foremost, military members of the National Guard of their state. Their civilian employment is contingent upon their continued membership in the National Guard. Under the Constitution, the command and control of the National Guard when not in Federal service rests with the States. Granting authority for the resolution of the appeal rights of military members in a purely civilian administrative organization is inconsistent with the principles of command and control and is, therefore, inconsistent with readiness.

*Question 2.* Please expand on how application of reduction-in-force procedures would affect the National Guard.

Answer. Reduction-in-force procedures already exist in the National Guard under regulations promulgated by the National Guard Bureau. These regulations recognize that, when technicians are placed in a position under reduction-in-force actions, they must meet all military and military-civilian compatibility requirements. In determining service and technician service computation dates for reduction-in-force actions, the National Guard Bureau regulations recognize all creditable Federal civilian service and total service as a technician with the National Guard, including service in other states. Competition for placement is necessarily limited to the state in which the reduction-in-force occurs.

General civil service reduction-in-force procedures are not adequate for National Guard excepted service technicians with respect to incorporating military grade, skill and compatibility requirements designed to ensure that the individual can perform required duties without disruption of work operations. Application of general civil service reduction-in-force procedures would also be incompatible with the necessary requirement that competition for placement of excepted service technicians must be limited to the state in which the reduction-in-force procedure occurs.

*Question 3.* Could you elaborate on how having National Guard Technicians eligible for competitive status would complicate training standards under the provisions of the Bonior amendment?

Answer. Under the Constitution, the states have the right to appoint officers in the militia and to administer and train the militia until such time as it is called or ordered into Federalized service. Since technicians must be members of the National Guard of the State, competitive status under the Bonior amendment providing appeal rights to MSPB for military technicians who are key members of the National Guard with respect to training and readiness, intrudes of the States' right to determine the composition of their military organizations.

Federal appeal processes can be quite lengthy and this causes the retention of a member in a key position in the military organization to the detriment of the unit. Also, an appellant who has been terminated put prevails on an appeal may be reinstated in the military organization causing disruption and an adverse impact on morale, discipline and cohesiveness.

These actions would unquestionably adversely impact training and overall readiness.

*Question 4.* Could you walk the Committee through step by step the current appeal rights of National Guard Technicians? Is it the same in every state?

Answer. The rights and the basic appellate system are set by a National Guard regulation and, therefore, are the same in every state. A technician can appeal an adverse action in either of two ways:

a. The technician can request an appellate review of the case by the Adjutant General. Under this method, the Adjutant General will review the entire case file, including any submissions by the appellant and render a final decision. Depending on the circumstances, this may include a meeting between the technician (and/or their representative) and the Adjutant General.

b. The technician can request an administrative hearing before a certified hearing examiner. Under this procedure:

(1) The National Guard Bureau provides the State a list of six hearing examiners all of whom are from another State/jurisdiction.
(2) The State selects and contacts the examiner.
(3) The examiner conducts a full evidentiary hearing to determine whether (using the same "preponderance of the evidence" standard applied by the Merit Systems Protection Board) the technician committed the offense(s) for which he or she had suffered the adverse action.
(4) If the examiner finds that the technician did commit the offense, the examiner next determines whether it is an offense for which a penalty should be imposed and whether the penalty selected by the state was appropriate for the offense.
(5) The examiner reports these findings to the Adjutant General concerned who makes the final decision.

*Question 5.* Please elaborate on the role and status of the hearing examiner. Is this person a National Guard employee? Is this a permanent career position or does this person later rotate into another National Guard position?

Answer. National Guard hearing examiners are full-time military technicians or members of the National Guard serving on full-time military duty. The hearing examiner function is an additional duty rather than a permanent career position. Hearing examiners are always from a different State. This helps to reinforce their neutrality from any influence from the Adjutant General of the State in which the appealing technician works.

Mr. MCCLOSKEY. General, is there anything you would add to that?

General D'ARAUJO. Mr. Chairman, I welcome the opportunity to address your subcommittee today on the issue of bringing military technicians of the National Guard into the competitive service.

The National Guard until called into active Federal service is under the command of the respective governors, exercised through their Adjutants General. Civil service rules that would prevail under a competitive system of technician appointments would deny the governors the authority over personnel selected to support their State National Guard.

In passing the National Guard Technician Act of 1968, the Congress was careful not to adversely impact the military nature of the program or the Governors' authority over the Military Technician Program for their State. The impact of legislation proposed recently, such as providing technicians appeal rights of adverse actions beyond the State Adjutant General, imposing title 5 reduction in force rules, and title 5 certification and qualification requirements would collectively have serious adverse impact on mission capability and mobilization readiness.

There is a long history of requiring technicians to be members of the Guard, and the requirement has proven to be a sound and effective method of producing efficient and potent National Guard military organizations. As a technician myself for 17 years and the commander of Guard units with technicians, I believe we should not compromise this military organization and provide opportunities to weaken its effectiveness by moving the National Guard technicians into the competitive service.

A strong military organization ready and able to perform both the Federal and State mission is our ultimate concern. For this reason, the National Guard Bureau remains strongly opposed to any legislation that would bring technicians into the competitive service.

Again, Mr. Chairman, I thank you for the opportunity to address your subcommittee.

Mr. MCCLOSKEY. Thank you, General. We have Mr. Young here, a member of the committee, about to make a statement. We have

also been joined by Mr. Bonior. We will have, I am sure, specific questions momentarily, but I would like to recognize Mr. Young and then Mr. Bonior.

## STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. Thank you, Mr. Chairman. Mr. Chairman, I would like to thank you for these hearings, I thank you for this opportunity to testify today. I am glad to see Mr. Bonior in the audience, too. For once we are really on both sides of an issue.

Today it is the question of converting the employment status of the excepted civil service employees in the National Guard to the competitive civil service. This is a subject of special concern to me and my excepted service constituents as well as the several thousand that make up the backbone of the Air National Guard nationwide.

Mr. Chairman, for decades the active military services and military service organizations affiliated with the National Guard have praised the Air and Army National Guard for their ability to maintain high levels of combat readiness in fulfilling their role as equal partners in our total national defense. As everyone knows, the organizational and combat readiness are built upon individual proficiency and excellence. These characteristics are epitomized by the excepted civil service technicians within the National Guard.

These loyal and dedicated employees are entitled to the same individual protection and employee rights to appeal that are guaranteed to all other Federal employees. Let's keep that in mind, they are Federal employees. Current law, which limits the right to appeal to the Adjutant General of the jurisdiction concerned, discriminates against these employees.

If fair and impartial decisions have been rendered by those in the personnel management structure, no Adjutant General should feel threatened or intimidated by an appeals review outside of his authority. I do not believe that anyone within this committee or this Congress would intentionally deprive this distinguished class of Federal employees their right to be heard.

I am appalled at the amount of misinformation that has been spread by those in opposition to the proposed conversion of technicians from excepted service to competitive service. Misinformation.

Examples include statements that it would remove the military nature of the technician program and result in the end of the National Guard, it would result in a loss of discipline, technicians would not have to be fit for worldwide duty, this is misinformation coming out of people that testify, and technicians would not have to wear the uniform, just to name a few. To those who are opposed, and I mean this sincerely, show me where the proposal implies such is the case. I would like to see it.

I submit that if this personnel conversion is bad for the National Guard, then, Mr. Chairman, we had better consider further hearings to reevaluate the military readiness of all of the other Reserve forces since their Federal civilian employees are in the competitive civil service. I want to stress that, Mr. Chairman. Maybe we ought to have further hearings to reevaluate the military readiness of all

of the other Reserve forces since their Federal civilian employees are in the competitive civil service.

Mr. Chairman, it is time to lay aside the emotionalism surrounding this debate. It is time for the National Guard Bureau and the Adjutants General of the several States to cooperate with us by beginning to make responsible and positive suggestions in resolving the issues identified in this conversion.

To do otherwise is to show total disrespect and disregard to a part of our Federal civilian work force that contributes so much to our national security.

Mr. Chairman, this is an important issue for my State and the people of my State, and I do thank you for the opportunity to make this short testimony.

Mr. MCCLOSKEY. Thank you very much, Congressman Young.

[The prepared statement of Hon. Don Young follows:]

PREPARED STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. Chairman, thank you for this opportunity to testify today on the question of converting the employment status of excepted civil service employees in the National Guard to the competitive civil service. This is a subject of special concern to me and my excepted service constituents as well as the several thousand that make up the backbone of the Air and Army National Guard nationwide.

Mr. Chairman, for decades, the active military services and military service organizations affiliated with the National Guard have praised the Air and Army National Guard for their ability to maintain high levels of combat readiness in fulfilling their role as equal partners in our total national defense. As everyone knows, organizational and combat readiness are built upon individual proficiency and excellence. These characteristics are epitomized by the excepted civil service technicians within the National Guard.

These loyal and dedicated employees are entitled to the same individual protection and employee rights to appeal that are guaranteed to all other Federal employees. Current law, which limits the right of appeal to the Adjutant General of the jurisdiction concerned, discriminates against these employees. If fair and impartial decisions have been rendered by those in the personnel management structure, no adjutant general should feel threatened or intimidated by an appeals review outside of his authority. I do not believe that anyone within this committee or in this Congress would intentionally deprive this distinguished class of Federal employees their right to be heard.

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Examples include statements that it would remove the military nature of the technician program and result in the end of the National Guard; it would result in a loss of discripline; technicians would not have to be fit for worldwide duty; and technicians would not have to wear the uniform, just to name a few. To those who are opposed, and I mean this sincerely, show me where the proposal implies such is the case.

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Thank you again, Mr. Chairman, for this opportunity to testify.

Mr. MCCLOSKEY. Can we hear from Mr. Bonior now. Perhaps you would like to join us up here or would you prefer down there? However you like. Mr. Bonior, of course you are welcome and your in-

terest in this is very much appreciated, your statement is accepted for the record, and you may proceed as you like.

## STATEMENT OF HON. DAVID BONIOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. BONIOR. I thank you, Mr. Chairman. I want to thank you for holding these hearings today about placing National Guard technicians in the competitive service, and I also want to commend the comments by my colleague, Congressman Young. Mr. Chairman, I have always appreciated your willingness to listen to my ideas in the past and have enjoyed working with you on our many common interests throughout our careers here in the Congress.

As you recall, last fall I joined with Congressman Young and Newt Gingrich and others on the other side of the aisle in offering an amendment to the fiscal year 1994 Department of Defense authorization bill that would have given National Guard civilian technicians competitive service status. There is clear bipartisan support on this issue.

Simply put, what we are trying to do is give National Guard civilian technicians the same basic rights guaranteed to every other civil service employee, including Air Force and Army civilian technicians.

Today National Guard civilian technicians work side by side with their Air Force and Army Reserve counterparts. They perform the same duties, they have the same responsibilities, they receive the same Federal paychecks. Yet when the National Guard civilian technicians have a grievance, unlike their Air Force and Army Reserve counterparts, they have nobody to make an appeal to. There is no third party to hear their case. Our amendment simply asked that the National Guard civilian technicians be given the same basic rights to appeal that virtually everyone else who earns a Federal paycheck has.

Specifically, we are asking that they be given the right to appeal adverse actions to the Merit Systems Protection Board. In making such a request, we are not trying to undermine the State Adjutant General's military authority or weaken the right of States to administer their own militia. We are not trying to say that the National Guard civilian technicians would be free of their military obligation, and we are not promoting the idea that technicians will compete for civil service job openings in different States.

We are simply asking that National Guard civilian technicians be given the same rights to appeal that people who work side by side with them on similar jobs have right now.

Mr. Chairman, I believe this is fair, and I would hope that the distinguished Members of the committee would also view this action that we are advocating as fair. Again, I want to thank you for hosting this hearing. This issue has been around a long time, and I believe, as Mr. Young has stated, that it is time we take a serious look at whether or not these individuals are being treated fairly.

I am hopeful that we are able to take another big step forward here today. I am eager to work with you and any Member of the committee as we continue to take steps toward providing basic fairness to all National Guard civilian technicians.

I thank you for allowing me the chance to make my case to you this morning.

Mr. MCCLOSKEY. Thank you, Mr. Bonior, and also Mr. Young.

[The prepared statement of Hon. David Bonior follows:]

PREPARED STATEMENT OF HON. DAVID BONIOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, first I want to thank you for holding this hearing today about placing National Guard technicians in the competitive service.

I have always appreciated your willingness to listen to my ideas in the past and have enjoyed working with you on our many common interests.

As you recall, last fall I joined Representative Newt Gingrich in offering an amendment to the fiscal year 1994 Department of Defense Authorization bill that would have given National Guard Civilian Technicians Competitive Service status.

There is clear bipartisan support on this issue.

Simply put, what we are trying to do is give National Guard civilian technicians the same basic rights guaranteed to every other Civil Service employee—including Air Force and Army civilian technicians.

Today, National Guard civilian technicians work side-by-side with their Air Force and Army Reserve counterparts.

They perform the same duties.

They have the same responsibilities.

They receive the same federal paychecks.

Yet, when National Guard civilian technicians have a grievance, unlike their Air Force and Army Reserve counterparts, they have nobody to make an appeal to.

There is no third party to hear their case.

Our amendment simply asked that National Guard civilian technicians be given the same basic rights to appeal that virtually everyone else who earns a federal paycheck has.

Specifically, we are asking that they be given the right to appeal adverse actions to the Merit System Protection Board.

In making such a request, we are not trying to undermine the State Adjutant General's military authority or weaken the right of States to Administer their own militia.

We are not trying to say that National Guard civilian technicians would be free of their military obligation.

And we are not promoting the idea that technicians will compete for civil service job openings in different states.

We are simply asking that National Guard civilian technicians be given the same rights to appeal that people who work side-by-side with them on the same jobs have right now.

Mr. Chairman, I believe this is fair. And I would hope that the distinguished members of the Committee would also believe this is fair.

Again, I thank you for hosting this hearing. This issue has been around a long time and I believe it is time we take a serious look at whether or not these individuals are being treated fairly.

I am hopeful that we are able to take another big step forward here today. And I am eager to work with you and any members of the Committee as we continue to take steps toward providing basic fairness to all National Guard civilian technicians.

Mr. MCCLOSKEY. I would like to ask both distinguished Congressmen, what is the intensity and the depth of this issue? Apparently you feel there must be some, but is there widespread unrest and problems, Dave, resulting from this?

Mr. BONIOR. I have been hearing about this issue, I don't know about my colleague from Alaska, but from my civilian technicians throughout my career in the Congress, you know, 18 years now. It is just something that gnaws at you when you have a grievance and you know the same person who may be performing the same job as you 40 hours a week, gets approximately the same pay, may have a similar grievance and can appeal it to the Merit Systems Protection Board because he or she happens to be in the Air Force

or Army civilian technician ranks, and you can't, there is a basic inequity there, and it is something that is a high priority issue for these people.

They have, like all organizations, a list of grievances and concerns that are important to them. This ranks right there at the top, and they have been frustrated in the fact that they have not had the attention that they believe they deserve.

Mr. MCCLOSKEY. As you have indicated in your testimony, it really isn't a matter of wanting to compete with seniority rights nationally, per se?

Mr. BONIOR. Not at all. It is just the right to have someone hear their appeals, and they are supported in this by the National Association of Government Employees, they are supported by ACT, AFGE, NFFE, they are supported by the other technicians, by the way, in the Air Force and the Army. They have a broad coalition of support. They just need to get their story out and have people listen to them, and this hearing is helpful in that regard.

Mr. MCCLOSKEY. Thank you, Mr. Bonior.

Mr. Young.

Mr. YOUNG. I can back up what Mr. Bonior said. What really came to our attention is when we increased the Air National Guard and the activities in the State of Alaska. We have a large refueling unit there, and both, as Mr. Bonior said, the Air Force technicians and the other technicians that are under—have the right of grievance are strongly in support of this.

They believe there is no "they got it and I want it," they really believe this is best for the morale, it is best for the unit to continue their work. There is a double standard here, and I am a little concerned when the Adjutants General, especially under the National Guard, feel as if they are going to be put upon or lose their authority when in reality if they are doing the job correctly, they will not any more so than the General that is in the Army or the Air Force.

As I say, we have increased our technicians in the State considerably, and it has come to the forefront probably more so in the last two or three years than it has been in the past because of the increased personnel.

Mr. MCCLOSKEY. Thank you, Don.

Dave, you are surely free to stay if you want to question any of the other parties.

Mr. BONIOR. I have a meeting I have to get to.

Mr. MCCLOSKEY. Thank you very much, it was excellent testimony.

Secretary Rush, you have heard from both Congressmen here, they have different views. I guess I would describe myself as open minded and neutral on this.

Why is there a difference between Guard and Reserve technicians? Why does this difference in treatment exist and why does the sky fall in if this change occurs?

Mr. RUSH. Well, I think that, you know, if we had to create something like the National Guard, we might not be able to do it. What has grown up in this country is a system where we have military forces that serve under the authority of the State in dual status as Federal reservists and who can also serve to support the domestic needs of the State in their State status. These forces train under

the authority of the State, and are ready at all times to serve on active duty in their Federal Reserve status.

That is a remarkable system, and one of the ways that it has worked is to recognize, as you do in military systems, that it is command and control which is central. In this case the command is with the Adjutant General in the State.

Therefore we think that appeal to the Merit Systems Protection Board, which could be lengthy, would undermine the authority, the constitutional authority of the State to train to the standards set out by the Army and the Air Force, and while you were waiting for the Merit Systems Protection Board to act, you would have that member in the unit and who might be put back in the unit, there would be that possibility. We think that is unnecessary and we think the system works.

Mr. MCCLOSKEY. Wouldn't the same logic apply to the Reserve program, too?

Mr. RUSH. In the case of the Reserve program, the matter comes down to really where the command and control is, and in this case the command and control is with the State and with the Adjutant General.

General D'ARAUJO. Mr. Chairman, if I might.

Mr. MCCLOSKEY. The Reserve technicians have MSP appeal rights and so forth, right?

Mr. RUSH. They do.

Mr. MCCLOSKEY. Now, that takes it out of military authority, right?

Mr. RUSH. It does.

General D'ARAUJO. Mr. Chairman, if I might, first a couple of observations and comments.

First of all, Mr. Young, I appreciate your observations on the readiness of the National Guard, Army, and Air. It certainly has been my experience over the last 30 years, and as a technician myself for 17 years, I can firsthand tell you that part of that component of readiness relates directly to our technician force.

I would tell you, however, that there is a very sharp difference that separates and makes the National Guard a unique military force in this country, and it is at the heart of this question in my view and that is the peacetime command and control constitutionally derived rests with the Governors of the several States, and I think when you get into the Technician Act of 1968, that was crafted with the very harmonious balance between the protections and benefits and rights offered the technicians at that time while at the same time preserving the command and control that accrues to the governors of the States.

So therein lies a very sharp difference between the Guard and the other Reserve forces, that duality, the State requirements in peacetime command and control while at the same time being a Reserve of the Army or the Air Force makes us very, very unique. No other Reserve force has that feature of it.

I would also point out that the appeal process, just to try and put this in perspective, from where I sit, I just don't understand the difficulty with it because looking over the last few years I have had our personnel people look into what has happened with this process of grievances and appeals, just to put it in perspective.

In those cases where the Adjutant Generals have made the final decision, about 17 percent of the time over the last couple of years they have ruled in favor of the employee. There is a provision in our system through regulatory policy of the National Guard where a hearing examiner is appointed outside the jurisdiction of the Adjutant General to examine the case presented by a technician, and make a recommendation to the Adjutant General.

Mr. YOUNG. May I interrupt, it is a recommendation. Let me ask the General, let's say I am a technician, I have been working, I have been doing everything right, but someone moves someone ahead of me with no justification, none whatsoever, what rights do I have as a technician to appeal to anybody but within the unit of the National Guard, and what chances do I have to have that type of thing overturned?

Under the other ones they do have that right, and that is happening. That is one of the major problems we have today. Not all Adjutants General, not all National Guard officers, not all those people are always lily white, and we have a technician that has done his job completely, he has done everything right, he is correct, his merits are there, his performance sheets are correct, and all of a sudden he gets overridden by someone else that happens to be a friend of the General's or the Commanding Officer. Now, who does he go to? Who do I go to?

General D'ARAUJO. Sir, if you would allow me to finish my point.

Mr. YOUNG. I am asking the question, please answer it.

General D'ARAUJO. In those cases where these hearing examiners have made recommendations, they found in favor of the employee 21 percent of the time. If you compare that against the civil service——

Mr. YOUNG. Twenty-one percent out of 100 percent they found in the employee's case?

General D'ARAUJO. They found in favor of the employee, and that was the recommendation. Only in one case that I am aware of did the Adjutant General overrule that.

Now, let's compare that against what I am told is the MSPD rate, and it is 19 percent ruled in favor of the employee, so I don't see that we are that disconnected.

Mr. YOUNG. Again, though, if we are not that disconnected then why don't we go ahead and offer everybody the same package? If you are not going to give it to the National Guard, let's take it away from the Reservists under the other branches, let's not have that, either.

What I am suggesting there is an opinion here by the technicians that they are second-rate Federal employees under the National Guard that have no right of appeal other than in-house. Now, you say 21 percent is a great record. I don't know. But their feeling is, "I don't have any rights. I have been overlooked, I have not had my advance as I should have it, and I have nowhere to go."

Under the others they do have the right, they have the right to appeal, they do have the feeling they have a voice. Right now the technician feels that he is left out. If you are a technician you understand what I am saying.

General D'ARAUJO. Sir, I have been a technician for 17 years.

Mr. YOUNG. You never had that feeling?

General D'ARAUJO. Sir, I never had that feeling. I was a technician since 1964. I was a technician when the conversion was made in 1968. I was in the system at the time.

What it represented to me was a much better benefit package, a much better retirement system. I have not encountered this huge ground swell of disparity that I hear. I have certainly heard from a number of voices that have expressed your concern, but out of 52,000 technicians, it is an awfully, awfully small number.

Mr. YOUNG. Mr. Chairman, I am just going to go back to one thing. I feel that there is an unfairness here, and I cannot for the life of me see, if the cases which you give me are correct, what is wrong with putting the National Guard—you say it is because the Governors are in control of that.

If that is the case and you say it is only 21 percent that have been advised they are in fact correctly—that the promotion was justified or not justified, then what is wrong with putting—why have two standards? That is the thing I don't understand. I cannot for the life of me understand. By the way, I want to know how many governors object to this proposal. Now, the Adjutants General do, but not the governors, to my knowledge.

General D'ARAUJO. Sir, I do not know where the governors——

Mr. YOUNG. I have not got one comment from any governor on this issue. I have had them from the Adjutants General. That ought to tell me something.

General D'ARAUJO. I can't answer for the governors. I don't know what their level of visibility over this is.

Mr. MCCLOSKEY. Thank you very much. Is there anything you want to add? Have you hit all the main points you wanted to? Obviously we have a profound disagreement here.

Mr. RUSH. Mr. Chairman, I would just say the last thing is that the systems are different and the basis for the system is the difference between the purely Federal Reserve and the National Guard dual status system. That system has worked well, and we think it has worked well since the National Guard Technician Act which recognizes that dual status.

Mr. MCCLOSKEY. Thank you very much.

Mr. Young, we are going to have a very interesting panel subsequent if you can stay around. Maj. Gen. Charles Whitaker, my good friend, adjutant general of the State of Indiana; Maj. Gen. Ansel M. Stroud Jr., president of the Adjutants General Association; and Maj. Gen. Robert F. Ensslin Jr., retired, executive director of the National Guard Association.

Generals, welcome again, your formal statements are accepted for the record. I don't know who has seniority here. Please proceed as you see fit.

**STATEMENTS OF MAJ. GEN. CHARLES W. WHITAKER, ADJUTANT GENERAL, STATE OF INDIANA; MAJ. GEN. ANSEL M. STROUD, JR., PRESIDENT, ADJUTANTS GENERAL ASSOCIATION; AND MAJ. GEN. ROBERT F. ENSSLIN, JR., RETIRED, EXECUTIVE DIRECTOR, NATIONAL GUARD ASSOCIATION**

General STROUD. Thank you, Mr. Chairman. I am Maj. Gen. A.M. Stroud, Jr., the adjutant general of Louisiana. I am president of the Adjutants General Association.

I might add that I have been in the National Guard since 1947. I have served as the assistant adjutant general of Louisiana for 8 years and as the adjutant general for the last 14 years.

I appreciate the opportunity to testify before your committee today on behalf of the Adjutants General Association, and I am here to express the opposition of the adjutants general of the States and the territories to any change in the legislation which would alter the current excepted status of our National Guard military technician force.

Technicians were made nominal Federal employees by the National Guard Technicians Act of 1968 expressly for the purpose of providing a standard retirement and fringe benefit program. I might add that being from Louisiana, I had numerous occasions to discuss this legislation with then Chairman Eddie Hebert, and he was very specific in the reasons for supporting that technician act. Senator Stennis said in supporting the legislation:

> The basic purpose of this bill is to provide Federal employee status for the technicians, thereby establishing for them a uniform and adequate retirement and fringe benefit program and at the same time provide for statutory administrative authority at the State level for the technician program in recognition of the military requirements and State characteristics of the National Guard.

We believe the Technician Act has accomplished precisely what it was intended to do, to provide a formal framework for pay rates, retirement, and fringe benefits. The adjutant generals believe National Guard technicians have been granted considerable and fair due process rights.

The National Guard Bureau has established adverse action procedures which are applicable to all National Guard technicians. These procedures, stated in regulations, provide the technicians the right to advanced written notice of proposed actions, the reason for such actions, the opportunity to review materials which form the basis for the proposed actions, and the opportunity to answer the charges. It provides for review by higher management and a written decision and provides throughout the process and the technician is entitled to representation.

These decisions are then subject to further review and all during this process the technician has a right to be represented and to cross-examine agency officials. Based upon a report of findings and recommendations developed by a hearing examiner who is not under the jurisdiction of the Adjutant General, the Adjutant General issues a final decision.

Mr. Chairman, the Adjutants General Association urges the Congress to continue to support the provisions of the National Guard Technicians Act of 1968. That legislation was well crafted and resulted in a very delicate balance of Federal and State responsibilities designed to provide a fair and equitable pay and retirement system for National Guard technicians while maintaining military command and control within the State. It has worked well. We believe there is no compelling need to change current law.

I appreciate very much the opportunity of appearing here on behalf of our association.

[The prepared statement of Major General Stroud follows:]

PREPARED STATEMENT OF MAJ. GEN. ANSEL M. STROUD, JR., PRESIDENT, ADJUTANTS GENERAL ASSOCIATION

Mr. Chairman, and members of the subcommittee, I appreciate this opportunity to testify before your committee on behalf of the Adjutants General Association of the United States. I am here to express the opposition of the Adjutants General of the States and Territories to any change in legislation which would alter the current excepted status of our National Guard military technician force.

National Guard technicians were made nominal Federal employees by the National Guard Technicians Act of 1968 expressly for the purpose of providing a standard retirement and fringe benefit program. The provisions of that Act, and the legislative history related to it, reaffirmed the intent to reserve to the states administrative control over the technician program. That position was summarized on the floor of the Senate by one of the sponsors of the bill, Senator John Stennis, on 25 July 1968, when he stated: "The basic purpose of this bill, Mr. President, is to provide Federal employee status for the technicians thereby establishing for them a uniform and adequate retirement and fringe benefit program and at the same time provide for statutory administrative authority at the state level for the technician program in recognition of the military requirements and State characteristics of the National Guard." The Senate Armed Services Committee report on the legislation (S. Report 90–1446) was also very clear when it stated: "In order to remove any statutory ambiguity the lines of authority with respect to administration and control are explicitly set forth as a part of the legislation * * * The bill provides that the Secretaries will designate the adjutants general of the various states to employ and administer technicians."

We believe the Technician Act has accomplished precisely what it was intended to do. It has provided a formal framework for pay rates, retirement and fringe benefits. It has also reserved to the states their Constitutional authority of appointment and management of officers and of training the Guard according to the discipline prescribed by Congress. Any attempt to divide control over the technician force would not only undermine military authority and discipline, but it very well could conflict with the Constitutional authorities of the States.

Conversion of National Guard military technicians to competitive civil service status could have several implications, including: employment restrictions or requirements not compatible with military requirements; reduction-in-force requirements which conflict with unit readiness; and Federal control of appeals under adverse action procedures. It appears that the latter issue may be the driving force behind the proposed change to competitive status.

The Adjutants General believe National Guard technicians have been granted considerable, and fair, due process rights. The National Guard Bureau has established adverse action procedures which are applicable to all National Guard technicians. These procedures, stated in regulations provide technicians the right to advanced written notice of proposed actions, the reason for such actions, the opportunity to review materials which form the basis for the proposed action, and the opportunity to answer the charges. A review by higher level management officials and a written decision are provided throughout the process and the technician is entitled to representation. These decisions are then subject to further review through an administrative hearing process, which provides a military technician the opportunity to present witnesses and cross examine agency officials. Based upon a report of findings and recommendations developed by a hearing examiner who is not under the jurisdiction of the State Adjutant General, the Adjutant General issues a final decision. This process protects the individual from arbitrary or capricious actions while retaining authority and responsibility for management of the military technician program within the state. Finally, the individual may refer the case to the federal courts. The entire process protects the rights of the individual and provides a speedy resolution of the case.

Mr. Chairman, the Adjutants General Association urges the Congress to continue to support the provisions of the National Guard Technicians Act of 1968. That legislation was well crafted and resulted in a very delicate balance of Federal and State responsibilities designed to provide a fair and equitable pay and retirement system for National Guard technicians while maintaining military command and control within the State. We believe there is no compelling need to change the current law.

Mr. MCCLOSKEY. General, just one question, before we get into general questions after all three of you have had a chance to speak. One of your statements of objection here was the possibility that reduction in force requirements would conflict with unit readiness.

I guess as I understand it, this is a matter of equating the civilian and military needs depending on the call-up status of the unit. Is that not correct?

General STROUD. Definitely.

Mr. MCCLOSKEY. I have difficulty understanding why a reduction in force problem is posed when it would seem the very essence of the structure of the civilian-military relationship would ensure that a reduction in force would take the needs of both the civilian party and the military parties into consideration.

Can you elaborate on that?

General STROUD. One of the strengths of the National Guard and the militia system is its uniqueness and differences brought about by the diversion, the spread, the geographic spread of units.

You will not find 54 exact military organizations, and I think that is the strength that was presented to the States and the territories by the constitution. As we look at the possibility of a reduction in force, we tie every technician job against the military requirement of that unit, compatibility, military compatibility, military skills and education and training, and we need the flexibility of which jobs should be maintained, not just the determination that seniority alone would drive.

Mr. MCCLOSKEY. Right. But couldn't that be part of the very essence of its structure? Obviously you need the civilian function at a certain time, the military function at another time, they are very similar, indeed almost identical. It is the same person performing similar roles at different times.

Now, why couldn't we address that legislatively or administratively? I guess I don't understand why you think a RIF on a civilian side would necessarily be uncoordinated with the military side when we are dealing with one person here.

General STROUD. I believe you have to leave the commander the flexibility, if you have a RIF, a reduction in force, and you are going to lose a percentage, that commander needs the flexibility to determine if that will be an administrative job that goes away, will it be a maintenance job that goes away, will it be an operational job that goes away.

Our concern is that the program is now working, Mr. Chairman, and that we are not sure about what the changes would bring about.

Mr. MCCLOSKEY. Well, General Whitaker, do you care to make a statement, sir. Really good to see you, Chuck.

General WHITAKER. Thank you.

Mr. MCCLOSKEY. Hope we are together some this summer.

General WHITAKER. Hope so, sir. Mr. Chairman and Members of the committee, it is a pleasure for me to have the opportunity of addressing this subcommittee on the issue that positions held by military technicians of the National Guard be made part of the competitive service.

National Guard military technicians are unique in their roles as State and Federal civil servants in the Army and the Air National Guard. They perform full-time civilian work in their units, perform military training and duty in their military unit of assignment, are available to enter active Federal service when called, and are prepared to serve the governor in a State emergency.

The Technician Act of 1968 established that 95 percent of the technician work force would be in the noncompetitive service and require——

Mr. MCCLOSKEY. General, could you bring that mike a little closer if you would, please, sir.

General WHITAKER. And require military membership. It provided a uniform retirement and benefits program for all employees. It also provided for absolute control of the technician program with the Adjutant General.

The proposed legislation to bring military technicians into the competitive service would have a serious adverse impact on the readiness of the Army and the Air National Guard and their capability of efficiently executing their Federal and State missions.

This legislation would erode the authority and control of the Adjutant General by providing appeal rights to the Merit Systems Protection Board on adverse actions. Certification and qualification requirements for employment would be in accordance with title 5, United States Code and would eliminate many of our traditional Guard personnel from employment consideration, it would impose title 5 reduction in force rules which are based on seniority rather than performance.

For these reasons I strongly oppose any legislation that would bring the employees of the National Guard military technician program into the competitive service. We have proven to be an extremely reliable and efficient fighting force when called upon. We should not enact any legislation that would reduce our capabilities or limit our outstanding contributions to the national defense.

I would like to make one comment on the readiness issue I think. I think it is very common knowledge that if you have a person that does a job 5 days a week, 40 hours a week that he is probably more proficient at doing that function than some of our traditional soldiers that only do it perhaps on weekends and annual training.

If we were not to have the excepted technicians doing their duties, we would lose a tremendous amount of expertise within the Guard, particularly on our weekend assemblies and our annual training period. A supply sergeant, for example, if that position is a competitive position, a supply sergeant would not be attending weekend assemblies or annual training with that unit, so who is going to maintain and manage the supplies if he is not there?

[The prepared statement of General Whitaker follows:]

PREPARED STATEMENT OF MAJ. GEN. CHARLES W. WHITAKER, ADJUTANT GENERAL, STATE OF INDIANA

Mr. Chairman and members of the subcommittee: It is a pleasure for me to have the opportunity of addressing this subcommittee on the issue that positions held by military technicians of the National Guard be made part of the competitive service.

National Guard military technicians are unique in their roles as State and Federal civil servants in the Army and Air National Guard. They perform full-time civilian work in their units; perform military training and duty in their military unit of assignment; are available to enter active Federal service when called; and are prepared to serve the Governor in a State emergency.

The Technician Act of 1968 established that 95 percent of the technician work force would be in the noncompetitive service and require National Guard membership for continued employment. It provided a uniform retirement and benefits program for all employees. It also provided for absolute control of the Technician Program with the Adjutant General. The proposed legislation to bring military technicians into the competitive service would have a serious adverse impact on the readi-

ness of the Army and Air National Guard and their capability of efficiently executing their Federal and State missions. This legislation would:

(A) Erode the authority and control of the Adjutant General by providing appeal rights to the Merit Systems Protection Board on adverse actions.

(B) Certification and qualification requirements for employment would be in accordance with title 5 United States Code and would eliminate many of our traditional guard personnel from employment consideration.

(C) Impose title 5 reduction-in-force rules which are based on seniority rather than performance.

For these reasons, I strongly oppose any legislation that would bring the employees of the National Guard Military Technician Program into the competitive service. We have proven to be an extremely reliable and efficient fighting force when called upon. We should not enact any legislation that would reduce our capabilities or limit our outstanding contributions to a national defense.

At this time, I will gladly answer any questions you may have.

Mr. MCCLOSKEY. I am sorry, General, could you restate that last idea, the last two or three sentences? I missed something there.

General WHITAKER. Supply sergeant, for example, I think our supply sergeants are GS–5's or GS–7's, if that is a competitive position, not required to be part of the military, then that person would not attend the weekend training assemblies nor would that person attend the annual training, so who then is responsible for the supplies because that person is during the week but not during weekend assemblies, so I think that would certainly contribute to the fall of readiness.

Mr. MCCLOSKEY. I guess, General—and Don, you are more steeped in all this than I am, why would giving the supply sergeant appeal rights or the supply technician appeal rights ultimately have to have anything to do with the designation of competitive status to the point where it undermines the military function?

Do you see what I am getting at, Don? Quite frankly, gentlemen, like I say, I am totally open on this, Chuck. I am not saying you aren't perfectly valid on your overall command and control point, but I think in many of these areas you constructed problems and demons either, that don't exist or that could be precluded by legislation.

Does that make any sense to you, Don?

Mr. YOUNG. Mr. Chairman, it makes sense to me. I want to hear the answer of the general. This is not the intent of my—I want a process by which the technicians in the National Guard have a right—I know you say they have it now—a right as the Reserves under the Air Force, the Reserves under the Army have, the technicians there have equal rights.

I have also raised this question, Mr. Chairman, one of the problems we have had is that there has been an attempt, very frankly, I think in many cases, where to replace the technicians now with active National Guard people, I think that is really what has caused a lot of this problem, the technicians being replaced primarily under the military regime, and I think that is one of the problems.

I want to hear the answer. Why does this change so much if all we are asking is to have the same rights in the Reserves as the technicians under the other unit?

General WHITAKER. Well, it is my opinion that in order to have those rights, they must be competitive civil service employees. Is that not right, Mr. Congressman?

Mr. YOUNG. Do the other technicians under the other units have this? They have the right to appeal, don't they?

General WHITAKER. Yes, they do, they are competitive technicians.

Mr. YOUNG. What is the difference there?

General WHITAKER. They are not required to have military membership if they are competitive technicians.

Mr. YOUNG. Go ahead, Mr. Chairman. I am reading another testimony here.

Mr. MCCLOSKEY. So in that sense it is not a nearly identical structure in the Reserve and in the Guard? They are totally separate personnel?

General WHITAKER. I am not that familiar with the Reserve.

Mr. MCCLOSKEY. They are totally separate personnel, perform similar functions, depending on the State of the call-up or the peacetime status?

General WHITAKER. Some of those people I am sure are military, but it is not required that they be military.

Mr. MCCLOSKEY. You are?

General ENSSLIN. I am General Ensslin.

Mr. MCCLOSKEY. Good, that is what I originally thought. General, please proceed.

General ENSSLIN. OK. We have submitted a written statement for the record, and I endorse everything that these gentlemen have said. I would like to say that at the heart of the issue is the military membership of the full-time force of the Guard. That is what really makes it as effective as it is because there is a commitment to the unit because there is the understanding that if the unit is mobilized and deployed, you go with it, you are part of it.

Mr. MCCLOSKEY. Is there a problem with having a military membership requirement and the MSPB appeal rights?

General ENSSLIN. I propose that notwithstanding some of the other comments that the ultimate objective is to civilianize the technician force. I have here a copy of an NAGE newsletter from last August that was from the [telecom] TILLICUM Washington local R12–112, and was issued in support of Representative Bonior's amendment. The president of the union, Ron Edmondson, writing in support of Representative Bonior's amendment, applauds the fact that the technicians have been able to get into the competitive civil service force if they are eliminated by the qualitative retention board. It says:

"While these changes help, they don't protect us if we become overweight, physically or medically impaired, or are unable to meet the standards set forth by the Army physical fitness test."

He goes on to say,

"It is my opinion that the technician force is a valuable asset and worth saving because it is made up of the most technically proficient workers in America. The best way to save our future and still provide the Guard with the same level of expertise and service is to convert to civilian competitive status. Those who were technically proficient yet unable to stay in the Guard because of its higher standards can continue serving in a civilian status. Conversion of technicians to civilian status will make the Guard and Reserve more technically and tactically proficient. Isn't that what we are all trying to accomplish?"

It is my strong conviction that that is the ultimate objective. I don't know of any significant groups that see the present system

as a problem other than the representatives of the technician unions.

[The prepared statement of Major General Ensslin follows:]

PREPARED STATEMENT OF MAJ. GEN. ROBERT F. ENSSLIN, JR., RETIRED, EXECUTIVE DIRECTOR, NATIONAL GUARD ASSOCIATION

Mr. Chairman, and members of the Subcommittee, the National Guard Association of the United States appreciates the opportunity to testify on behalf of our Association members, the more than half a million members of the National Guard, and the 52,000 technicians in the Army and Air Guard. The Association is dedicated to ensuring the readiness of Guard units and to maintaining the quality of their members. We are also committed to continuing the unique dual federal and state roles of the Guard in providing a capable, accessible and affordable force to meet the needs of the nation, state and community.

One of the major concerns of this Association is the need to ensure that the Guard can meet fundamental readiness requirements in providing ready forces. A pivotal element in maintaining stability of day-to-day unit operations in administration, training and maintenance is the full-time support force. Even during the current period of downsizing of manpower and structure, the remaining force is being modernized with highly technical and sophisticated equipment and, in many instances is being tasked with higher readiness and earlier deployment requirements which rely on a skilled and robust full-time force.

The National Guard full-time support force is composed of two elements, the Active/Guard and Reserve [AGR] member and the Technician. Both bring unique characteristics that support the mission of the Guard.

The National Guard Association of the United States fully supports the current mix of AGRs and Military Technicians, which remain under state control until called into active Federal service. We strongly object to any legislation that would change the status of Military Technicians from excepted to competitive civil service status. The National Guard Technicians Act of 1968 (Public Law 90–486) made National Guard technicians Federal employees for the limited purpose of providing them a uniform and adequate retirement and fringe benefit package. It provided specific exemption from the veterans' preference and adverse personnel action provisions of section 2108 and 7512 of Title 5, United States Code, and vested certain statutory administrative authority with each State Adjutant General.

Noncompetitive (excepted) status for Military Technicians is necessary because of the requirement that technicians hold concurrent Guard membership as a condition of their Federal civil service employment and be terminated whenever military membership ceases. Any legislation removing the "State characteristics of the National Guard" would destroy the balance and purpose of the provisions of the Technicians Act.

The full-time manning programs of the National Guard are devised to maintain a vitalized, enthusiastic, and effective military force. These programs include Selective/Qualitative Retention Programs, mandatory retirement dates, and time in grade maximum service limitations. Factors such as experience, maturity, patriotism, and loyalty that normally accompany individuals with veteran preference are obtained naturally from the requirement for National Guard technicians to hold compatible military positions in a Guard unit.

Changing the Military Technician status to competitive civil service would impose certification and qualification requirements for employment in this program under Title 5, United States Code that would eliminate many of our drilling Guard members from eligibility for full-time employment due to a lack of creditable experience. Most occupation skills under civil service classification require several years of experience to qualify. A drilling Guard member who attends a 3–4 month military school and then trains one weekend a month and two weeks active duty each year would often be unable to obtain the experience required for a position compatible with their military skills even though they are eminently qualified to do the job. Thus the ability to maintain an effective and deployable force would be severely limited. The National Guard Military Technician program guarantees a vital force which revolves around a retention system based on qualifications and performance versus seniority.

One of the arguments that has been presented over time for conversion of Technicians to competitive civil service has been the concern for due process under adverse action procedures. Currently National Guard technicians have considerable due process rights. These procedures are stated in regulations and provide technicians the right to advanced written notice of proposed actions, the reasons for the pro-

posed action, and the opportunity to answer the charges. Several levels of review and representation are available throughout the process. Decisions are subject to review through an administrative hearing process, which provides the military technician the opportunity to present witnesses and cross examine agency officials. Based on the findings and recommendations developed by a hearing examiner, who is not under the jurisdiction of the States Adjutants General, the Adjutant General issues a final decision. This procedure protects the individuals while retaining authority and responsibility for management of the Military Technician Program within the State.

In conclusion, the National Guard Association strongly urges the committee to reject any legislation that would change the current Military Technician excepted service program to competitive civil service. Such legislation would remove one of the pillars upon which the program was constructed, thereby diluting the command and management authority of the office of the Adjutant General who, under the direction of his governor, is responsible for the readiness of the National Guard of each state. The technician program has proven to be an effective and efficient method of sustaining the readiness and capability of the National Guard. Now, more than ever before, with increased requirements to support federal and domestic missions, the National Guard needs to maintain the current system of managing its people.

Mr. MCCLOSKEY. That is a pretty important group, though, don't you think? They are the ones who are living it every day, right?

General ENSSLIN. If you had 100 percent membership in the technician unions, that would be the case, but you don't have to belong to a technician union, and I don't have the statistics on the percentage of membership. I know in my 10 years as the adjutant general in Florida, we had very marginal membership in the technician unions in the State of Florida.

Mr. YOUNG. Mr. Chairman, may I ask——

Mr. MCCLOSKEY. Mr. Young is recognized.

Mr. YOUNG. Has the Department of Defense and the National Guard Bureau attempted to eliminate the technicians and replace them with full-time National Guard employees?

General ENSSLIN. No.

Mr. YOUNG. They have not done that?

General ENSSLIN. No.

Mr. YOUNG. Are you positive of that, sir? There has not been replacements? There hasn't been an effort to decrease the effectiveness of the technicians?

General ENSSLIN. I will yield to General Stroud here.

General STROUD. In 1977 I headed a study group that looked at the full-time manning of the Guard and the Army Reserve, and there was an effort and there was a concern about improving the readiness of the National Guard, and it became evident that some type of full-time support was absolutely essential, increased full-time support, particularly for early deploying units.

A new category in 1979 was created known as the Army Guard and Reserves, AGR program. This did not take away one single technician authorization from the Army National Guard. These were plus upped to improve the readiness, and that was the entire program and the intent of the program, so, yes, both in the Air National Guard and the Army National Guard there is this program, but it did not replace and it did not cause a single technician to lose his or her job.

Mr. YOUNG. What I am leading up to, Mr. Chairman, let's not kid ourselves, and I understand DOD and National Guard was brought up in the letter here, you are not terribly in love with the unions, I can understand that, but the question is in the 95th Congress

really we passed the law defining technicians as military personnel, thereby prohibiting unionization and then recently the National Guard Bureau, to avoid the requirements of Executive Order 12–871 relating to labor management partnerships, I am sure you are aware of that.

I am just wondering if you have this attitude, what chances do the technicians have of retaining their positions today if there is a feeling with DOD and the National Guard to replace them slowly but surely with full-time individuals, thus eliminating the technicians and the problems you are faced with.

General STROUD. I am personally aware of repeated efforts by the National Guard Association, by the Adjutants General Association, I believe by the National Guard Bureau to get the numbers of technicians increased, and we were never able to get that funded, and so there is a requirement today for more technicians than we have, and I think——

Mr. YOUNG. Technicians under the present status or technicians that would be not civilian technicians, but directly related to the military?

General STROUD. I cannot answer for the National Guard Bureau, but, yes, sir, the two associations have identified time and again the need to meet all the requirements and fill them with technician jobs. We have not tried at any time to eliminate those jobs.

General ENSSLIN. We welcome additional full-time manning of whatever character, be it technician or AGR. Those people become transparent in the organization, you can't look at a guardsman in uniform and tell whether he is an AGR or a technician or a State member being paid and sponsored by the State military department.

General STROUD. Mr. Chairman, General D'Araujo tells us he is on record in his testimony before Congress requesting additional technicians.

Mr. MCCLOSKEY. What is the current status of appeal rights for National Guard technicians? This was alluded to previously, but are they the same in every State?

General STROUD. The appeal rights are set out in the National Guard regulations, and I would think that they are basically the same in every State. They might be—each State adapts their own, but——

Mr. MCCLOSKEY. General Whitaker, how often do you make final decisions yourself on adverse personnel actions?

General WHITAKER. Very rarely. I have been adjutant general now 4 plus years, and I only know of two instances that I have even had a problem, and generally I have supported, in those two cases I have supported the individual.

Mr. MCCLOSKEY. The individual?

General WHITAKER. Yes.

Mr. MCCLOSKEY. So you have been personally active in two cases?

General WHITAKER. Those are the cases that never get to the hearing examiner. Those are the cases that are resolved right in States. I think in today's society, as we all know, you can't just

throw those things under the rug anymore, you have got to meet them head on and you have got to be fair with the individual.

Mr. MCCLOSKEY. How many civilian technicians, General, do we have in Indiana?

General WHITAKER. In Indiana, I have a total of 1,800 employees, half of which are excepted civil service, roughly 900, 920.

Mr. MCCLOSKEY. Gentlemen, I want to thank you for your testimony. I don't have anything further.

Mr. Young.

Mr. YOUNG. Mr. Chairman, without getting anybody in trouble, I have an adjutant general working for me, and he happens to think this is not a bad idea. He served 35 years, and he reviews the National Guard very closely, and for your information, one of the driving forces, I think he believes there is still an unfairness doctrine here, so I just want you to know that.

I am not coming out of the dark on this one. This is a guy that worked many, many years, Brigadier General, and I think he is very qualified. He still has a great interest in the National Guard, he does think that there is an unfairness doctrine here, and we will continue to discuss with him on a 1-on-1 basis, and whether he will disagree with his boss or not, I don't know, but we will find out.

Thank you, Mr. Chairman.

Mr. MCCLOSKEY. Thank you, Don, appreciate your help today, it has been outstanding.

We are going to go to the concluding panel. Charles Bernhardt, labor relations/wage specialist, AFGE; Sheila Velazco, president of the National Federation of Federal Employees; Phil Jackson, president of NAGE Local R3–84, that is the National Association of Government Employees; and also Mr. John T. Hunter, president of the Association of Civilian Technicians.

I would like to welcome you all again. Please make yourselves comfortable. Your formal statements are accepted for the record. You can proceed in the order you would like and if you would, please, summarize. I have one more different subject area we have to go into after this, and I have to be out of here at noon, so I really do appreciate your help on this. You are obviously very informed in the area, so please proceed.

**STATEMENTS OF CHARLES BERNHARDT, LABOR RELATIONS/WAGE SPECIALIST, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES; SHEILA K. VELAZCO, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES; PHIL JACKSON, PRESIDENT, NAGE LOCAL R3–84, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES; AND JOHN T. HUNTER, PRESIDENT, ASSOCIATION OF CIVIL TECHNICIANS, ACCOMPANIED BY SAMUEL L. SPEAR, AUTHOR OF BONIOR/GINGRICH AMENDMENT**

Mr. BERNHARDT. Mr. Chairman and members of the subcommittee, I am Charles Bernhardt, I am a labor relations/wage specialist with AFGE.

As you said, Mr. Chairman, our statement has been submitted for the record, so I would like to be brief, if I can. The hearing today is on whether civilian technicians in the National Guard should be converted from the excepted to the competitive civil serv-

ice along the lines suggested by last year's amendment to the defense authorization bill sponsored by Representative Bonior.

Conversion of these positions for us is not a complicated matter. As Representative Bonior said of the amendment, it is about one basic issue, and that issue is fairness. For the witnesses that we have heard so far, the issue doesn't seem to be one of fairness, but seems to be one of power.

The current system retains ultimate authority for the continued employment of technicians in the hands of the employer. Competitive service would introduce the right to have neutral outside review of these decisions. Issues of readiness, issues of State control, they are red herrings for us, Mr. Chairman.

Dual status would be continued under the Bonior amendment. Civilians with competitive status performed outstandingly when called into active duty for Desert Storm. Whether those individuals were at stateside bases, in Reserve units, or civilians in the theater itself, the people with competitive status performed in an exemplary manner.

We don't see how that would discontinue if competitive status were extended to the National Guard technicians. The issues raised that we have to preserve the mission of serving domestic needs of the State is also a red herring, Mr. Chairman. What else would these people do? If a technician would refuse an order to engage in such activity, that is insubordination whether the person holds competitive status or excepted status.

The Merit Systems Protection Board doesn't care what the mission of the National Guard unit is. All they care about is that an employee's procedural and substantive rights are protected. We think that extending competitive service to these technicians would not eliminate the dual status of the technicians. Rather, it would enhance, just that, the dual nature of their employment.

We thank you for this opportunity to appear, Mr. Chairman, and appreciate this interest in this issue.

Mr. MCCLOSKEY. Thank you, Mr. Bernhardt. We will get into questions in just a bit.

[The prepared statement of Mr. Bernhardt follows:]

PREPARED STATEMENT OF CHARLES BERNHARDT, LABOR RELATIONS/WAGE SPECIALIST, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. Chairman and subcommittee members: My name is Charles Bernhardt, and I am a labor relations/wage specialist with the American Federation of Government Employees, AFL–CIO. AFGE represents over 700,000 employees in the Federal and District of Columbia governments, including many civilian technicians who serve their country in the National Guard and the Army and Air Force Reserve. At the outset, I want to express my appreciation to this Subcommittee for its continued attention to matters affecting civilian technicians.

Over the years, we have had many occasions to testify on behalf of our civilian technicians, and, thanks in large measure to the efforts of the members of this Subcommittee, some of those important issues have been dealt with successfully.

Today's hearing considers whether civilian technician positions in the National Guard should be converted from the accepted to the competitive civil service, along the lines suggested by an amendment to last year's defense authorization bill, sponsored by Representatives David Bonior (D-MI) and Newt Gingrich (R-GA).

Conversion of these positions is not a complicated matter. As Representative Bonior said of his amendment, "(it) is about one basic issue, and that is fairness." Quite simply, National Guard civilian technicians should be guaranteed the same rights as every other civil service employee, including Army and Air Force Reserve civilian technicians.

During the Department of Defense's downsizing, it is especially important that civilian technicians in the National Guard be treated fairly. As you know, Mr. Chairman, competitive status employees have certain rights when they face the loss of their positions through no fault of their own. For example, the civil service recognizes veterans' preference. It also has a statutory scheme mandating an order of retention for those whose positions are being abolished. But competitive status also allows employees certain other advantages. For example, an employee who enjoys competitive status possesses appeal rights to the Merit Systems Protection Board, an important forum for addressing certain adverse personnel actions. Competitive status also allows for upward mobility; federal employees in that favored category can apply for positions throughout the government without first being placed on a selection register by the Office of Personnel Management [OPM].

Understandably, the opponents of the Bonior-Gingrich amendment found it difficult to argue that civilian technicians in the National Guard should be denied the same basic rights extended to all other civilian employees. Instead, they contended that treating these brave men and women equitably would somehow have many terrible consequences. Quite simply, that is not true. Let me address their fallacious arguments one by one.

Conversion would not alter the requirement that civilian technicians in the National Guard maintain dual military and civilian status. Civilian technicians in the Reserves already enjoy competitive status, but are still required to maintain dual status. Mr. Chairman, as you and your colleagues know, AFGE has consistently opposed the dual status requirement for civilian technicians—whether they be in the Guard or the Reserves—that deprives them of their civilian positions when they lose their military status—a disadvantage not imposed upon any other civilian employee. But today's hearing is not the time to address this matter, significant though it is. At the same time, however, Mr. Chairman, it can't be emphasized strongly enough that conversion would not result in the loss of the dual status requirement, as any civilian technician in the Reserves will tell you.

Conversion would not diminish the military authority of the State Adjutants General. In fact, the Bonior-Gingrich amendment ensures that the State Adjutants General would still employ the civilian technicians in the National Guard, who would continue to deploy with their units if activated. Further, any adverse action rights granted would not be applicable to challenges predicated on the civilian technician losing his civilian position when he can no longer hold his military grade.

In fact, conversion would simply provide civilian technicians in the National Guard the same basic, fundamental rights as all other civilian employees:

To be considered for appointment to other competitive positions within the federal government.

To have their retention rights and veterans' preferences recognized when separated from their positions through no fault of their own;

And to challenge unjustified personnel actions.

Way back in 1986, OPM argued that placing civilian technician positions in the National Guard in the competitive service would create an unfair entry route and that these men and women should compete on the same basis as anyone else who has never before worked for the federal government. This totally ignored the plain and simple facts that civilian technicians in the National Guard are federal employees; that they have been trained at government expense; that they possess valuable knowledge and expertise; and that to ask them to repeat the process of applying anew for government employment is patently unfair. OPM's opinion notwithstanding, conversion of civilian technician positions in the National Guard to competitive status only gives these men and women the same options with respect to applying for competitive civil service positions as other federal employees. For every civilian technician who remains in service, the federal government has the advantage of an employee who will continue to apply the training and skills for which it has already paid.

Mr. Chairman, AFGE and its many civilian technician members appreciate this opportunity to appear before your Subcommittee and discuss this important matter, and we urge you and your colleagues to support efforts to convert civilian technicians in the National Guard to competitive status.

That concludes my testimony. I will be happy to respond to any questions you may have.

Mr. MCCLOSKEY. Ms. Velazco, you may proceed.

Ms. VELAZCO. Good morning, Chairman McCloskey and members. I appreciate being here and as a fellow Hoosier, I also appreciate seeing you this morning.

Mr. MCCLOSKEY. Where from?

Ms. VELAZCO. Muncie. On behalf of the National Federation, I am very thankful for this opportunity to be here. We represent a lot of National Guard technicians, and I think that a couple of things need to be brought out today, and that is that when we are talking about the National Guard program, we are specifically referring to people who have, as Charlie said earlier, dual status. They are not military status only. I think that is a very important issue. Primarily the majority of their time is spent as civilian workers, and we cannot forget that.

Mr. MCCLOSKEY. Do you see any possible trend that the General alluded to of breaking up that relationship, so that they would only have the civilian status and they would not have the military responsibility?

Ms. VELAZCO. I think that is not even a danger, it is not even a goal. Of the people who are involved and employed by the National Guard, our civilian technicians, that is not their goal. They joined the Guard in order to make sure that they have that dual status so that they can be used in times of military need, and so that they can be ready to protect anything that is needed to be protected, so that is not a goal.

Mr. MCCLOSKEY. How about this RIF concern, that you could have a civilian RIF affecting the military function?

Ms. VELAZCO. The RIF function, if they coordinate it with the unions that represent the organization, that should not in the long run affect anything. People should be looked at with regard to their performance, their seniority and everything.

They are there in the civilian status, in the military status both because of performance. We are not ever saying that they should not be dedicated to good performance. The RIF procedures and the possibility of having RIF organized with unions and management shouldn't affect that, not at all. One of the other things that you asked us to address, and I would like the comments, the official comments to be entered into the record, but you asked us to address military readiness.

Mr. MCCLOSKEY. Please, yes.

Ms. VELAZCO. Again, having an ability to have a hearing held, an impartial hearing held on somebody being disciplined, removed should not affect military readiness. What it does is it prevents somebody from making a mistake, it prevents somebody from making an arbitrary decision, and it does not say that we will not have a civilian status, civilian technician force that is not militarily ready.

Frankly, it should relieve some burden off of the Adjutant General because right now they are in a sense perceived as a God. They decide, and they have final authority. If they make a mistake, there is no appeal, and so it is a relief, I would think, from them from making a mistake that could be corrected later.

So in response to the assertion NFFE contends that the review of disciplinary actions by an independent source would not in any way inhibit management's, the Adjutant General's authority to propose and process adverse actions.

In the Federal Government right now we can propose and process them, and so it would not stop that. It would just merely make

the process would be just and also fair. It seems logical that rights granted to other Federal employees, including Army and Air Force civilian Reserve technicians, should be extended to the technicians in the National Guard.

I think it should be noted that competitive service employees went over to the GOFOR, we had the Reserve technicians go over, we had DOD employees go over. They are competitive service, and yet they were mobilized, they were efficient, they were effective. Their competitive status did not affect that at all.

I think also that with regard to the fact that this would take some power away from the States, I think we should remember that the Constitution, Article 1, Section 8 said that the Congress shall have the power to provide for organizing Army and disciplining and for governing such part of them as may be employed by the United States, reserving to the States respectively the appointment of officers, the authority to train them.

By giving them competitive service, we are not saying they can't appoint officers, we are not saying they can't discipline. We are not saying they cannot train. We are saying that in fact we are not taking anything away from the States, we are not taking anything away from the Adjutant General, we are providing fairness, and there is, in fact, I would agree with the General this morning, there is an esprit de corps within the National Guard Service that is outstanding, and it is from people right now who have dual status, and I think that that status can be maintained, should be maintained. Nobody is trying to get rid of it, and that they still can be very effective with being treated properly and justly.

Thank you very much.

Mr. MCCLOSKEY. Thank you, Ms. Velazco.

[The prepared statement of Ms. Velazco follows:]

PREPARED STATEMENT OF SHEILA K. VELAZCO, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Good morning Chairman McCloskey and members of the Subcommittee: On behalf of the National Federation of Federal Employees, I am pleased to be here to offer our views on the conversion of the National Guard Technicians from the excepted to the competitive civil service. As you know, the National Federation of Federal Employees is the nation's oldest independent federal employee union representing 150,000 employees in 53 agencies, including full-time civilian technicians in the National Guard.

The National Guard Technician Program was established in 1947 to ensure proper administration, supply and maintenance of the National Guard while improving its readiness. Since that time, the National Guard has come to recognize the importance of civilians in the Guard program. Currently, there are more than 50,000 dual status technicians employed by the National Guard.

NFFE wholeheartedly believes that National Guard technicians should be converted to the competitive service. National Guard technicians perform their jobs with the same dedication and commitment as employees in the competitive service and should be given the same basic due process rights which are necessary to protect their jobs. The National Guard Technician force exists to assure that during a state of emergency, the National Guard will be able to send manned, effectively-trained units to active duty in the shortest possible time. These full-time technicians are the backbone of the National Guard.

Ninety-five percent of the National Guard technicians have dual status, meaning they must maintain military status as a condition of their federal employment. Due to this mandatory military membership, the technicians are categorized as "excepted" rather than "competitive" federal civil service employees.

Because the National Guard Technicians' civilian employment depends on maintaining military status, the technicians are in an unusual position. Overall, they give more than the ordinary Federal employee. They work their normal 40 hour

week, but they also spend at least one weekend a month and several weeks throughout the year performing their part-time military National Guard duties. Further, they must maintain the physical and technical abilities necessary for immediate immersion into full-time active duty in wartime.

Unfortunately, the rights of National Guard civilian technicians differ substantially from the rights of other Federal employees. First and foremost among these differences is the right to appeal adverse actions. While almost every other Federal employee is granted the right to an impartial hearing by MSPB in the event of disciplinary action, civilian technicians are denied this basic right of due process.

When drafting the Technician Act of 1968 the lawmakers of the day realized that National Guard Technicians, like those members of the competitive service, should be protected from termination based on erroneous accusations. But unfortunately, the act stopped short of providing technicians the same remedies which protect competitive service employees from arbitrary and even capricious terminations. Similar to the law governing the competitive service, the Technician Act requires that terminations for conduct, the Technician Act requires that terminations for conduct or performance must be for cause. However, unlike the law governing employees in the competitive service, the Technician Act does not provide these excepted service employees with the same procedural protections. This lack of protection leads to one of the most serious inequities between the technicians and the members of the competitive civil service.

The procedural right denied to the technicians is the right to an impartial hearing—one of the most fundamental elements of due process. It is a right guaranteed to all members of the competitive service. If any adverse action (such as a demotion, suspension for more than 14 days or termination) occurs, the affected competitive service party can appeal his case to the Merit Systems Protection Board (MSPB) or, in the case of competitive service employees represented by a union, challenge that decision before a labor arbitrator. The Board then decides the outcome of the case on its merits. It should be noted that in the Ethics Reform Act of 1989, members of the Senior Executive Service were also provided with this appeal right.

In the National Guard Program, technicians are not able to appeal adverse actions beyond the adjutant General of their respective state. In essence, the fox is guarding the chicken coop since the Adjutant General also issues, examines and processes an adverse action against an employee. Therefore, an adverse action decision is appealed to the very person who decided to take the action in the first place.

NFFE maintains that since National Guard Civilian Technicians serve a critical role in keeping our nation strong, they also deserve to have the same basic rights as the Army and Air Force reserve technicians with whom they work side by side conflicts such as the gulf war. They should have the same rights that most everyone else who receives a federal paycheck has—the right to appeal adverse actions to the Merit Systems Protection Board.

NFFE is aware that some argue that granting these due process protections will harm the effectiveness of the National Guard. In response to this assertion, NFFE contends that the review of disciplinary actions by an independent source would not in any way inhibit management's, or the Adjutant General's, authority to propose and process adverse actions. Instead it merely provides a process to ensure just and proper decisions. It only seems logical that the rights granted to other federal employees and to Army and Air Force Civilian Reserve Technicians should be extended to technicians in the National Guard.

As you know, this due process inequity has been brought up previously. In fact, during House consideration of the Department of Defense authorization bill in September of 1993, Mr. Bonoir and Mr. Gingrich offered an amendment which would have extended competitive service status to National Guard technicians. During the course of the debate on the Bonior/Gingrich amendment, opponents listed several reasons for their opposition of the proposal. These included claims that such a proposal would reduce the readiness of the guard and that such a plan would violate the states right to regulate their militia.

Claims that the conversion of National Guard Technicians to competitive service would reduce the combat readiness of the guard is contrary to logic. The National Guard Technicans have an espirit de corps that rivals any of the services. Their commitment to combat support and maintenance is exemplary. Furthermore, the experience of the Army and Air Force reserves belies the contention that conversion to competitive service would reduce combat readiness. Currently, the full-time technicans of the U.S. Army and Air Force reserves, along with DoD civilian employees, are in the competitive service. These competitive service employees successfully and rapidly mobilized during Operation Desert Shield/Storm with no adverse impact on their unit's combat readiness.

Additionally, NFFE contends that the conversion of National Guard technicians would not violate constitutional provisions which provide for state control over the National Guard. In fact NFFE contends that such a conversion is in keeping with Article 1 §8, clause 16 of the United States Constitution which provides that "the Congress shall have the power of provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed by the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." The conversion of National Guard Technicians to competitive service clearly falls within the scope of organizing and disciplining the militia as prescribed by the Constitution. Furthermore, in no way would this conversion impact on the ability of the states to appoint the officers of their guard or to their ability to train their guard units.

In conclusion, NAFFE asserts that the conversion of National Guard Technicians from the excepted to the competitive service is long overdue. For far too long, these dedicated and hard working employees have been working to preserve rights enjoyed by all Americans while being denied those same rights themselves. It is time that we more to protect those who protect us.

This concludes my testimony, I will be pleased to answer any questions you may have.

Mr. MCCLOSKEY. Mr. Jackson, president of the National Association of Government Employees. Good to see you, sir. Please proceed as you like.

Mr. JACKSON. My name is Phil Jackson. I am president of NAGE Local R3–84 at Andrews Air Force Base, and I have been president of that local for about 8½ years.

I am also a proud member of the D.C. Air National Guard for 21 years, so I am here representing the National Association of Government Employees. NAGE represents thousands of Army and Air National Guard civilian technicians as well as Army and Air Force Reserve Guard technicians.

Mr. Chairman, I am honored to be here today to discuss competitive service for National Guard technicians. Competitive civil service would enhance our national defense and readiness, alleviate recruitment and retention problems, and have a tremendous positive impact on the morale of the technicians.

Title 32, National Guard technicians are excepted service employees, title 5 Army and Air Force Reserve technicians are competitive service employees. All technicians must maintain dual status as drilling Reserve component members as a condition of their employment.

Despite the fact that these Federal employees perform the same functions, vast differences exist in how we are treated. Most importantly, competitive service employees have rights to appeal adverse action decisions to the Merit Systems Protection Board, while excepted service employees may not.

Civilian technicians provide a model of the cooperation between the civilian and the military. Technicians daily practice the skills we rely on when and if we are called to active duty. Technicians repair and maintain all equipment used by the Reserve forces so it is in tip-top shape during training sessions.

Mr. Chairman, this issue is about fairness. Competitive service employees when faced with the removal, suspension, or furlough are entitled to basic due process protection such as notice of charges, an opportunity to respond, and the right to a hearing before an independent examiner of the MSPB. Further, an employee is entitled to at least 30 days written notice of the charges, at least

seven days to answer the charges in writing, and a written decision including specific reasons for the action.

Employees in the competitive service are thus rightfully accorded basic due process rights in adverse actions, but are also given some judicial tools to enforce those rights, including the use of formal discovery procedures and the right to examine and cross-examine witnesses. Competitive service employees who return adverse actions are entitled to recover attorneys' fees and back pay to minimize the out-of-pocket expenses of employees and provide a financial incentive to the agency to be prudent and just.

National Guard technicians have none of these rights. In fact, Guard technicians cannot appeal adverse actions beyond the Adjutant General. Yet there is no mission-related reason why technicians should not be allowed to appeal an adverse action to an objective party so long as the incident occurred during performance of the technician's duties, civilian duties.

Three main points were argued by opponents of the Bonior amendment. First, opponents argue that granting competitive service status would adversely affect readiness. This argument is a fallacy. Technicians employed by the Army and the Air Force Reserve, for example, are title 5 employees with full benefits of competitive service. No one argues that there has been any drop in readiness for these employees who perform the same mission for the Armed Forces as we do.

Second, opponents argue that competitive service would undermine the supervisory authority of the Adjutant General. This argument fails as well. We recognize that supervisors must be allowed to take disciplinary actions against employees who fail to perform their jobs.

At the very least, however, an Adjutant General may be perceived as having a bias in favor of a management disciplinary action, especially when the decision has been supported through subsequent supervisory channels. This perception provides an existence of the MSPB as a judicial body specifically created to hear and decide appeals in an unbiased, professional, fair, and timely efficient manner requires a change in the law.

Granting civilian technicians competitive service status, however, would not adversely affect supervisory authority. Disciplinary actions supported by the preponderance of the evidence as determined by an administrative law judge trained and experienced in making such factual and legal determinations will continue to be upheld in a timely manner.

Third, opponents argued that no need exists to amend the law because court challenges resulting in reversal of the Adjutant General's decision are extremely rare. This argument ignores the fact that a legal challenge to an AG's decision is a time consuming and costly process.

The use of the MSPB forum, on the other hand, is less expensive and more time efficient. An MSPB decision must be rendered within 120 days. An analogy concerning third party review of an agency's actions lies in H.R. 2721. Such bill includes the provision transferring investigatory authority over discrimination complaints from the agency to the EEOC.

The rationale is partly that the Congress does not want agencies to continue the role of self-policing and discrimination complaints. This analysis is sound and applicable to the issues faced by the National Guard technicians today.

In conclusion, Mr. Chairman, Congress must pass legislation ensuring that all civilian technicians are placed in the competitive service. Competitive service status will enhance readiness, provide basic due process fairness to technicians, greatly improve technician morale, and will enhance labor management relations in the technician work force.

I would be very happy to answer any questions that you or any Members of the committee may have, seeing as how I am a technician currently.

[The prepared statement of Mr. Jackson follows:]

PREPARED STATEMENT OF PHIL JACKSON, PRESIDENT, NAGE LOCAL R3–84, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

INTRODUCTION

The National Association of Government Employees (NAGE) is an affiliate of the Service Employees International union, AFL–CIO, the fourth largest union in the AFL–CIO. NAGE represents 200,000 employees in the federal government, and is the fourth largest federal employee union in the country. The Army Air Technician Union (AATU) is a division of NAGE which represents civilian technicians in the Army and Air National Guard, as well as the Army and Air Reserves.

On behalf of NAGE/AATU, we want to congratulate you for holding this hearing to discuss competitive service for civilian technicians in the National Guard. For many years, NAGE/AATU has supported legislation to place civilian technicians of the National Guard in the competitive service. Not only would competitive civil service enhance our national defense and readiness, but also it would have a tremendous positive impact on the morale of civilian technicians because it would restore the integrity of the civil service system to this important group of federal employees. This, in turn, would alleviate recruitment and retention problems that must be addressed for a successful military into the 21st Century.

BACKGROUND—THE CIVILIAN TECHNICIAN PROGRAM

Civilian Technicians are Federal civilian employees hired under Title 5 or Title 32 of the United States Code. Civilian Technicians employed by the National Guard are governed by Title 32 of the United States Code, where they are designated as "excepted service" employees. Civilian Technicians of the Army or Air Reserves are Title 5 employees and are designated as "competitive service" employees. Both competitive service and excepted service civilian technicians must maintain dual status as drilling Reserve component members as a condition of their employment. Statutory authority for dual status for National Guard technicians is contained in Title 32, while authority for Army or Air Reserve technicians has been included in each DoD Appropriations Act since 1983. Despite the fact that these employees perform the same functions, vast differences exist in how they are treated as federal employees due to their categorization as competitive or excepted service employees. Most importantly, competitive service employees have rights to appeal adverse action decisions to the Merit Systems Protection Board, while excepted service employees are not afforded such rights.

There is no debate that the Civilian Technician Program has been an unqualified success. Civilian technicians have earned praise for all quarters as skilled productive workers who provide the Department of Defense (DoD) with loyal, experienced personnel who are a key mobilization asset. Civilian technicians, as civilian DoD employees who are also trained members of the Reserves or Guard provide a model of the cooperation between the civilian and military sectors that is essential for a successful military. Civilian technicians are perhaps our most qualified reservists as they daily practice and hone the skills they will rely on when, and if, they are called to active duty. Civilian technicians repair and maintain all equipment used by their respective reserve forces so that it is in top notch condition when mobilized. The equipment, including tanks, trucks, jets radar and communication hardware and software is also used for reserve training purposes and must be repaired and main-

tained after each weekend and annual training session. The concept that technicians perform full-time civilian work and are available to enter active federal service at any time their units are called has been a dramatic positive example of teamwork between the civilian and military sectors for readiness.

Although the civilian technician workforce has been one of DoD's most productive, over the years its very existence has been threatened by self-destructive initiatives from DoD and the National Guard Bureau (NGB). DoD attempted to eliminate unions from the technicians work force by defining civilian technicians as military personnel, thereby prohibiting unionization, in the 95th Congress. Most recently, this attitude towards unions has been displayed by the initial efforts of the National Guard Bureau to avoid the requirements of Executive Order 12871 relating to labor-management partnerships.

Because DoD was unable to prevent technicians from joining unions, it has attempted through a variety of ways to eliminate the civilian technician program, or make it so unattractive that technicians would quit. For years, DoD attempted to replace technicians with Active Guard Reserve (AGR) personnel, without regard to costs or effects on readiness. In addition, the service components employed regulations to involuntarily retire and separate technicians through selective retention panels. Subjective considerations often interfered in the retention decisions of loyal, hardworking employees.

### COMPETITIVE SERVICE EMPLOYEES' RIGHT—DUE PROCESS AND COMMON SENSE

Many of the due process protections accorded competitive service employees today have their roots in the Pendelton Act, passed by the Congress in 1883, and the Lloyd-La Follette Act, passed by the Congress in 1912. As this Committee is well aware, competitive service employees today are still accorded many of these basic due process rights when faced with an adverse action. Competitive service employees when faced with a removal, suspension of more than 14 days, or furlough of 30 days or less are entitled to basic due process protections such as notice of charges, an opportunity to respond, and the right to a hearing before an independent hearing examiner of the Merit Systems Protection Board. Under 5 U.S.C. §7513, an employee is entitled to at least 30 days written notice of the charges against him, at least seven days to answer the charges in writing with legal assistance if desired, and a written decision including specific reasons for the action.

Employees in the competitive service are thus rightfully accorded basic due process rights in adverse actions but are also given some judicial tools to enforce those rights. Under the rules and regulations of the Merit Systems Protection Board, an appellant has the opportunity to further investigate the charges against him through the use of formal discovery procedures. The proper use of discovery procedures enables the appellant to at least partially offset the otherwise overwhelming resources available to the Agency and the National Guard Bureau in investigating and processing adverse actions. Competitive service employees are also entitled to a hearing on the merits, including the right to examine and cross-examine witnesses.

The MSPB requires that the Agency prove charges by a preponderance of the evidence. Competitive service employees who are able to overturn adverse actions are entitled to recover attorney's fees as well as back pay. This minimizes the out of pocket expenses which employees suffer from a wrongful adverse action. The threat of a potential attorney's fee award also provides a financial incentive to the Agency to be prudent and just in administering adverse actions.

### THE RIGHTS OF NATIONAL GUARD CIVILIAN TECHNICIANS

Unlike their competitive service counterparts elsewhere in the federal government, National Guard civilian technicians are precluded from appealing adverse actions to either the Merit Systems Protection Board, or to an outside arbitrator. In fact, under 32 U.S.C. §709, National Guard civilian technicians are precluded from appealing adverse actions beyond the Adjutant General. Review by a court of competent jurisdiction of Adjutant General decisions are virtually nonexistent. There is no mission-related reason why a technician should not be allowed to appeal an adverse action to an objective party, so long as the incident occurred during the performance of the technician's civilian duties.

Civilian Technicians employed by the Army and Air Reserve, for example, are Title 5 employees with the full benefits of competitive service status. No one argues that there has been any drop in readiness for these employees, who perform the same mission for the armed forces as do National Guard Civilian Technicians. Indeed, there is other ample precedent that affording technicians MSPB appeal rights and other competitive service mechanisms will not adversely affect readiness. The

readiness of the armed forces is affected by the actions of each employee in the Department of Defense. Almost every one of the approximately one million civilian employees of DoD enjoys competitive service, and NAGE/AATU assets that the readiness of DoD has been enhanced by providing a system whereby efficient appellate review by an administrative court insures that individuals who are unjustly separated, suspended, downgraded, or fired are returned to jobs to which they perform admirably.

THE BONIOR AMENDMENT TO H.R. 2401—THE FISCAL YEAR 1994 DOD AUTHORIZATION BILL

NAGE/AATU believes National Guard civilian technicians are entitled to the same due process protection as are most other federal employees. We strongly support legislation such as H.R. 1234, which would provide technicians with appeal rights to the Merit Systems Protection Board for adverse actions. Unfortunately, an amendment to the FY94 DoD Authorization Bill, H.R. 2401, which would have placed technicians into the competitive service was defeated by a vote of 156–256 on September 13, 1993.

Three main arguments were offered by the opponents of the Bonior Amendment to H.R. 2401. The first argument centered on readiness, and as discussed previously, NAGE/AATU believes that the experience of Army and Air Reserve Technicians, as well as all other civilian employees of the Department of Defense, sufficiently refutes the flag draped argument that readiness will be affected. Second, opponents argued that competitive service would undermine the supervisory authority of the Adjutant General. This argument fails as well.

NAGE/AATU recognizes that supervisors and top management officials must be allowed to take disciplinary action against employees who fail to competently perform their jobs or who display misconduct. At the very least, however, an Adjutant General may be perceived as having a bias in favor of a management disciplinary decision, especially when such decision has been supported through subsequent supervisory channels. Such perception alone supports a change in law, specifically to encourage higher morale among the civilian technician workforce. The MSPB was specifically created to hear and decide appeals in an unbiased, professional, fair and time efficient manner. It is the very existence of the MSPB as a judicial body that clamors for change in the law. Unlike the MSPB, the Adjutant General does not have a primary mission of insuring an unbiased and fair right of appeal to a technician who has challenged disciplinary action. Furthermore, the Adjutant General is not a trained adjudicator of disputes.

Granting civilian technicians competitive service status will not adversely affect supervisory authority. Disciplinary actions supported by a preponderance of the evidence as determined by an administrative law judge, trained and experienced in making such factual and legal determinations, will continue to be upheld in a timely manner. Such review will only serve to create better supervisors.

Third, the opponents of the Bonior Amendment argued that no need exists to amend the law because court challenges resulting in the reversal of an Adjutant General's decision are extremely rare. This argument ignores the fact that a legal challenge to an AG's decision is a time-consuming and costly process. Few attorneys are willing to challenge disciplinary actions because the individual cannot afford the attorney's services. The use of the MSPB forum, on the other hand, is less expensive and inordinately more time efficient. Indeed, the MSPB is statutorily required to decide appeals within 120 days of filing. This allows an employee access to an appeal system that he or she cannot currently afford if the law remains unchanged.

H.R. 2721 AND THE EEO EXPERIENCE

An apt analogy concerning third party review of an Agency's action lies in H.R. 2721; such bill includes a provision transferring investigatory authority over discrimination complaints from the agency to the Equal Employment Opportunity Commission. The rationale is partly that the Congress does not want agencies to continue a role of self-policing in discrimination complaints. This analysis is sound, and applicable to the issues faced by National Guard Technicians today. DoD and the National Guard Bureau have consistently resisted efforts by NAGE/AATU and other unions to transfer the NGB's self-policing burden to a more experienced, trained, and most importantly, neutral body.

5 U.S.C. 3329 AND CIVILIAN TECHNICIANS

NAGE/AATU wishes to address one other important issue to the technician workforce relating to competitive service. In 1992, during debate on the FY93 DoD

Authorization Bill, Congressman Moakley and Congressman Derrick offered an amendment that became what is now 5 U.S.C. §3329, entitled "Appointments of Military Reserve Technicians to Positions in the Competitive Service". This provision was intended to address an unfortunate aspect of the "dual status" requirement that National Guard Technicians endure. The loss of the part-time military position in the Guard requires the technician to be separated from his full-time civilian position. Therefore, 5 U.S.C. §3329 was drafted to permit civilian technicians who lose their military position to transfer to the competitive service. Unfortunately, the intent of this important amendment has been severely reduced in its implementation. DoD is just now, almost two years later, floating draft regulations as required by law, and our preliminary review of these regulations indicates that Congress' intent will be frustrated, as DoD and the National Guard Bureau's fear of competitive service employees continues.

CONCLUSION

The Civilian Technician program of the National Guard has been one of DoD's most productive. Congress must pass legislation insuring that all civilian technicians are provided full competitive civil service status. Competitive service status will enhance readiness, provide basic due process fairness to civilian technicians, greatly improve civilian technician morale, and will enhance labor-management relation in the civilian technician work force.

Mr. MCCLOSKEY. You are a technician?

Mr. JACKSON. I am a technician currently.

Mr. MCCLOSKEY. I understand that. I think you have a wealth of knowledge and experience, and I will have several questions for you momentarily.

Thank you.

Mr. John Hunter, president of the Association of Civilian Technicians.

Please proceed.

Mr. HUNTER. Thank you, Mr. Chairman. I am accompanied this morning by Mr. Samuel Spear who believe it or not is the author of the Bonior Gingrich amendment and H.R. 1234.

I am happy to be here on behalf of the 17,000 proud men and women in 34 States who are employed as civilian technicians in the National Guard and who comprise the Association of Civilian Technicians.

I appreciate the opportunity to appear before the committee and present our views on the appropriateness and constitutionality of the possible legislation which would convert technicians from the excepted to competitive branches of Federal service.

At the conclusion of this testimony is the Bonior/Gingrich amendment and a line-by-line comparison of the provisions of the amendment, including the Federal laws which they would affect and the impact they might have.

During the first session of the 103rd Congress when the House was deliberating the Department of Defense authorization bill, an amendment was introduced by Mr. David Bonior, House Majority Whip, and Mr. Newt Gingrich, House Minority Whip, which would have provided competitive service status to National Guard technicians.

Much has been stated since the amendment was first reported, most of which has been very confusing. Most statements attempted to depict dire consequences by passage of the Bonior-Gingrich amendment. Statements such as: Technicians will retain their technician jobs when no longer eligible for continued military member-

ship, full-time employees will become nondeployable, technicians will no longer be required to be members of their military unit.

Nothing is further from the truth. Attaining competitive status under the amendment would not have changed the requirement to be members of one's military unit. The intent of the amendment was to leave intact the requirement that National Guard membership be a condition of employment for technicians as prescribed in 32 USC 709(e)(1) and (2). Units of the Army and Air Force Reserve whose full-time technician employees have always——

Mr. MCCLOSKEY. Mr. Hunter, could I interrupt for just a second, I hate to do this, but your full statement is accepted for the record.

Mr. HUNTER. This is just a summary, I have about two more pages.

Mr. MCCLOSKEY. Please proceed.

Mr. HUNTER. I tell you what, let me just——

Mr. MCCLOSKEY. No, please proceed.

Mr. HUNTER. Let me close it out.

Mr. MCCLOSKEY. No, don't close it out. Make sure you at least list all your key points.

Mr. HUNTER. I think we can get into that, but I want to make a statement. In the House report, or I should say Senate report, 1446, and I believe you have heard the statements made many times this morning that the concept of the technician program is that technicians will serve concurrently in three different ways.

One, they will perform full-time civilian work in their units; two, perform military training and duty in their units; and, three, be available to enter Federal active duty service.

This amendment does not change any of those items. They all remain intact. The amendment, of course, would provide appeal rights to the technician. I will answer any questions you might have, sir.

Mr. MCCLOSKEY. Thank you very much.

[The prepared statement of Mr. Hunter follows:]

PREPARED STATEMENT OF JOHN T. HUNTER, PRESIDENT, ASSOCIATION OF CIVIL TECHNICIANS

Mr. Chairman and members of the committee, on behalf of the 17,000 proud men and women in 34 States who are employed as civilian technicians in the national Guard, and who comprise the Association of Civilian Technicians, I appreciate this opportunity to appear before the committee and present our views on the appropriateness and constitutionality of possible legislation which would convert technicians from the excepted to competitive branches of Federal service.

At the conclusion of this testimony is the Bonior/Gingrich amendment and a line-by-line comparison of the provisions of the amendment, including the Federal laws they would affect and the impact they would have.

During the first session of the 103d Congress, when the House was deliberating the Department of Defense authorization bill, an amendment was introduced by Mr. David Bonior, House Majority whip, and Mr. Newt Gingrich, House minority whip, which would have provided competitive service status to National guard Technicians.

Much has been stated since this amendment was first reported. Most of which has been very confusing. Most statements attempted to depict dire consequences by the passage of the Bonior/Gingrich amendment.

Statements such as:

(1) "Technicians will retain their technician jobs when no longer eligible for continued military membership."

(2) "Full-time employees will become nondeployable."

(3) "Technicians will no longer be required to be members of their military units."

Nothing is further from the truth. Attaining competitive status under this amendment would not have changed the requirement to be a member of one's military unit. The intent of the amendment was to leave intact the requirement that National Guard membership be a condition of employment for technicians as prescribed by 32 U.S.C. 709(e) (1) and (2).

Units of the Army and Air Force Reserve whose full-time technician employees have always been competitive civil service employees and mobilized during Operation Desert Shield/Storm and other deployments with no adverse impact of their civil service status on their readiness, abilities, or performance.

Regarding impact on the National Guard's hiring practices, Congress has been told that States will be forced into advertising vacancies nationwide to the detriment of local guardsmen seeking positions. Yet in testimony before the House Subcommittee on Civil Service of the Committee on Post Office and Civil Service, Mr. Kermit Lusk, Chief, Personnel Services Division, National Guard Bureau, testified that OPM registers are used by agencies only if those agencies Merit Promotion Program and or negotiated labor agreements allows individuals outside the State to apply.

Most of the National Guard technicians are protected by labor-management agreements. Their collective bargaining agreements either provide for State regulations or the negotiated procedures to govern the merit promotions or internal placement actions of the agency, which normally only allows for the internal search and selection prior to looking at qualified candidates from other appropriate sources which includes traditional guardsmen as well as anyone eligible to join the National Guard.

The Technician Act disallowed technicians being awarded veterans preference. Technicians with prior active military duty peacetime and war related service, question the logic of Congress at the time of enactment, and of those members of the Congress who still today, continue to deny awarding veterans their rightful recognition when that preference could result in a veteran receiving a technician position over a recent enlistee in the National Guard.

The same type of procedural protection is provided by the opportunity for the parties through the negotiated agreement to protect employees in a reduction in force [RIF] situation. The ability of an employee to maintain his position or be offered another in a RIF is driven primarily by performance. Longevity only is used as tiebreakers. Again, the Bonior/Gingrich amendment did not propose any radical departure from current National Guard reduction in force procedures.

In short, the amendment raises no constitutional concerns. Granting to these Federal civilian employees rights already provided other Federal employees does not offend the constitution equation; it merely furnishes these civilian employees the right to more meaningfully assert their civilian employment concerns less expensively, more effectively, and without necessitating the intervention of the courts. Affording these employees competitive service status and MSPB appellate rights, is a policy choice Congress is entitled to make. A limited power the States have to "train" and to "appoint officers" of the National Guard imposes no constitutional hurdle to the enactment of the specific procedures sought by this legislation. The militia clauses confer on the States the right to regulate certain military affairs with the "militia" but do not impinge on congressional authority to regulate the civilian employment concerns of those Federal employees who work for National Guard units.

The association would like to take this opportunity to thank the subcommittee for its continued support of the National Guard technician and reserve programs.

This completes my statement Mr. Chairman, I will be happy to answer any questions you or members of the committee may have at this time.

Mr. MCCLOSKEY. Mr. Jackson, can you give us some examples of this quagmire and these arbitrary decisions and this oppression that evidently is going on.

Mr. JACKSON. Yes, sir. As I said, I have been union president for 8½ years, and I have been present at about six sessions with the Adjutant General where a complaint has gone to his level, and none of those have been ruled on behalf of the technician.

Mr. MCCLOSKEY. I am sorry, will you state that again?

Mr. JACKSON. None of those instances, in any of the instances has the Adjutant General ruled on behalf——

Mr. MCCLOSKEY. How many cases has that been that you are citing?

Mr. JACKSON. At least six, sir.

Mr. MCCLOSKEY. In your experience at Andrews?

Mr. JACKSON. That is correct. And in many instances there was a lot of concern about whether or not all of the evidence had been thoroughly considered, but again with the Adjutant General being at the top, the employee has no opportunity to go beyond that or review any of his situations.

Mr. MCCLOSKEY. What types of disciplinary or other administrative problems do these cases involve?

Mr. JACKSON. There may have been issues where the employer had perceived an employee disobeying a direct order, and there have been instances where an employee has been in a situation where he has had to make a decision, and it may have been contrary to established rules.

We had an instance where an employee was trapped in a building as a result of an emergency, an alarm had gone off, and there were established routes for employees to exit the building, but he was in a situation where he couldn't exit using that route, and he was accused of not following a directive.

Mr. MCCLOSKEY. Why could he not exit?

Mr. JACKSON. Well, the situation was a leak of a fluid from an aircraft, and this was in a hangar, and the fluid is very toxic, and where the leak was discovered was blocking an established escape route, so he couldn't use that escape route, and in fact he hadn't left the building until a period of time had passed by, so his supervisor had accused him of not following established standards.

Mr. MCCLOSKEY. So his defense said the established procedure was either dangerous or impossible, and that was not qualitatively considered?

Mr. JACKSON. That was his defense. No, it was not.

Mr. MCCLOSKEY. What happens if a technician loses a job or runs into a situation with the military weight requirements? The military weight standards are a major concern for readiness, does that ever come up?

What would this amendment do in a case like that?

Mr. JACKSON. This amendment wouldn't have any impact on that situation whatsoever. That is a totally different matter.

Mr. MCCLOSKEY. OK. Just generally speaking you have all heard the discussion and the points raised before. Is there any way that these concerns about RIF's and separating the civilian and the military service could cause the morale to collapse, the morale collapse that the military witnesses fear. Are there any valid concerns there?

You seem to posit a pretty straightforward fairness and basic appeal rights decision, but evidently there is a lot of trepidation in the military.

Ms. VELAZCO. I would say, sir, that probably morale would be increased if somebody felt that they had an impartial hearing right. We had an arbitration done in Utah a couple of years ago in which an arbitrator ruled in favor of an employee who was going to be dismissed and made a recommendation based on that ruling to the Adjutant General.

All the facts and the arbitrator's recommendation were not to dismiss the employee, and the Adjutant General instead did dis-

miss the employee. I think that should we have this impartial hearing that the employees will feel that they are valued, respected, and that they have a place to go should they need it, and so I think it would only improve things.

Mr. MCCLOSKEY. What percentage of these technicians are unionized?

Mr. HUNTER. I would say at the present time about three-quarters of the National Guard is represented by labor organizations, about 37,000 plus.

Mr. JACKSON. I agree.

Mr. MCCLOSKEY. If technicians were made competitive civil service, and you have heard this question raised, and Mr. Bonior gave his answer, but would a technician from out of State be able to bid and win a position over in-State personnel?

Mr. HUNTER. Sir, the whole—I guess red herring was the word used earlier, and I think that is a red herring. If you will read the statement that I had prepared, all merit placement programs are established either in a State procedure or a negotiated labor agreement with the unions that represent the technicians, and I would assume the majority of the labor agreements in the area of merit placement would have your on-board technicians that would receive the first area of consideration, the second area might be statewide Army and air technicians, then maybe they would open up to the entire Indiana National Guard, and then from there they might go outside the State.

But there is a pecking order in most negotiated agreements as far as merit placement goes, so you are not going to see nationwide postings on the first probably three or four areas of consideration. That just wouldn't happen.

Mr. MCCLOSKEY. But there could be out-of-State bidding, so to speak?

Mr. HUNTER. Only after the on-board technicians and probably the national guardsmen within the unit would have a chance at that job.

Mr. JACKSON. If I may add, sir, there is out-of-State bidding under the current procedures if a position hasn't been filled within the organization, within the agency, then locally, then it is open to nationally.

Mr. BERNHARDT. It is also important to note, Mr. Chairman, that the amendment doesn't affect the requirement that this technician have dual status, which includes both civilian employment in that State and a position in the military unit in that State.

If somebody else comes from another State eventually, as we said, in a pecking order of job bidding, that person is also going to have to maintain the dual status, and if that is the way that the National Guard unit in State *X* is able to recruit a qualified person for the unit, then hooray for the National Guard unit, we have succeeded, we haven't failed.

Mr. JACKSON. I would like to add also there was some question about whether or not Air Force or Army Reserve technicians were required to have dual status, and they are. That has been changed, and it was changed about 5 years ago.

Mr. HUNTER. 1983.

Mr. MCCLOSKEY. We are just maybe to the point of redundancy, and I am sure getting the messages of the people testifying today. Mr. Jackson you're working at the grassroots level on all this, you basically feel that the present process is manifestly unfair, the present appeal rights and structure and hearings structure is not——

Mr. JACKSON. Absolutely. It is just not filling the bill, sir.

Mr. MCCLOSKEY. OK. Do any of you support a proposal to allow National Guard technicians access to Merit Systems Protection Board rights without giving technicians all other benefits associated with competitive status?

Mr. HUNTER. We do support the MSPB rights, if that was the question, I believe, that you stated.

Mr. MCCLOSKEY. But beyond that, all other competitive rights?

Mr. HUNTER. Oh, yes, I believe all of the rights that would be established for competitive employees would be provided to the National Guard technician, absolutely.

Mr. MCCLOSKEY. But again, we are going through these things several times, just so it is clear to everyone involved, but we have heard from the Generals today that they fear a bifurcation, if you will, of the military civilian joint status.

Mr. HUNTER. Sir, I think we have to get back to the basic amendment, the Bonior-Gingrich amendment. That amendment clearly did not remove the dual status requirement for the technicians.

Mr. MCCLOSKEY. I understand that, but you have heard them bring that up.

Mr. HUNTER. Oh, yes, I understand that, but I am not sure anybody read the legislation or the amendment. I think that is the problem, and that is where the confusion came in. There still is a requirement for the technician to be a member of the Guard and deploy with his unit, that still is a requirement.

Mr. MCCLOSKEY. So obviously you feel that some of these military concerns are a little bit unreasonable?

Mr. HUNTER. Oh, absolutely. I am not sure the parties have read the basic amendment, the Bonior-Gingrich amendment. I really don't think they have because I think if they did, they would be basically saying the same thing we are saying. It doesn't change any of the aspects of that Technician Act except in the area of an appeal right for that technician to go outside of that Adjutant General to the MSPB in the area of an adverse action, that is it.

Mr. MCCLOSKEY. Thank you, Mr. Hunter. Anyone else with any concluding comments? You have all done very well. I really appreciate it. This issue will be revisited. Thank you.

The final portion of our hearing today is going to focus on H.R. 4884, introduced by my esteemed colleague, Congresswoman Eleanor Holmes Norton, Chair of the Subcommittee on Compensation and Employee Benefits.

I am glad to welcome Ms. Norton. Her legislation would grant certain FBI employees competitive status. Due to disturbing trends which occurred in the identification division during the 1980's, in 1989 the Federal Bureau of Investigation embarked on a plan to revitalize the identification division.

In addition, a feasibility study was conducted on relocating the identification division to address the attrition and hiring problems.

In 1990 the Bureau identified a location in Clarksburg, WV, as the most feasible site to relocate the identification division.

Approximately 1,200 employees have been identified that do not wish to relocate to the new location in Clarksburg. Although the Bureau has been taking assertive steps to assist these employees in finding other jobs within the Bureau, an abysmal attrition rate, tight budgets, and the continued restructuring and downsizing of the Federal Government has led to problems in finding alternative employment. If further assistance is not provided, these 1,200 employees will be RIF'd by the end of fiscal year 1996.

However, all FBI employees are hired under the excepted service and do not have the ability to compete for jobs in the competitive service. Therefore, these employees cannot automatically apply for other Federal jobs.

Ms. Norton's bill, H.R. 4884, would authorize noncompetitive, career or career-conditional appointments in the competitive service for employees of the Criminal Justice Information Services who do not wish to relocate. Each individual must meet the qualification requirements prescribed by the Office of Personnel Management for the position to which appointed, and this authority would expire on September 30, 1999.

Although I am concerned about whether this legislation will really be helpful due to tight budgets and downsizing through out the Federal Government, I am interested in ensuring that the Bureau has every avenue available to assist its employees in finding other employment.

Again, I want to commend Representative Norton for her leadership and concern in this area. I appreciate our final two witnesses about to appear, look forward to their testimony and recognize Ms. Norton.

[The prepared statement of Hon. Frank McCloskey follows:]

PREPARED STATEMENT OF HON. FRANK MCCLOSKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

The final portion of our hearing today will focus on H.R. 4884 introduced by my esteemed colleague, Representative Eleanor Holmes Norton, Chair of the Subcommittee on Compensation and Employee Benefits which would grant certain FBI employees competitive status.

Due to disturbing trends which occurred in the Identification Division [ID] during the eighties, in 1989 the Federal Bureau of Investigation embarked on a plan to revitalize the identification division. In addition, a feasibility study was conducted on relocating the ID to address the attrition and hiring problems. In 1990, the Bureau identified a location in Clarksburg, West Virginia, as the most feasible site to relocate the Identification Division.

Approximately 1,200 employees have been identified that do not wish to relocate to the new location in Clarksburg. Although the Bureau has been taking assertive steps to assist these employees in finding other jobs within the Bureau, an abysmal attrition rate, tight budgets and the continued restructuring and downsizing of the Federal Government has led to problems in finding alternative employment. If further assistance is not provided, these 1,200 employees will be RIF'd by the end of fiscal year 1996.

However, all FBI employees are hired under the excepted service and do not have the ability to compete for jobs in the competitive service. Therefore these employees cannot automatically apply for other Federal jobs.

Ms. Norton's bill, H.R. 4884, would authorize noncompetitive, career or career-conditional appointments in the competitive service for employees of the Criminal Justice Information Services who do not wish to relocate. Each individual must meet the qualification requirements prescribed by Office of Personnel Management [OPM]

for the position to which appointed and this authority would expire on September 30, 1999.

Although I am concerned about whether this legislation will really be helpful due to tight budgets and downsizing throughout the Federal Government, I am interested in ensuring that the Bureau has every avenue available to assist its employees in finding other employment.

Again, I want to commend representative Norton for her leadership and concern in this area. I appreciate our final two witnesses' patience and look forward to their testimony.

Ms. NORTON. Thank you very much, Chairman McCloskey. I want only to make an abbreviated statement and ask that my entire statement be included in the record.

Mr. MCCLOSKEY. So accepted for the record.

Ms. NORTON. You have my sincere thanks for your quick and favorable response to my request for a hearing in what, as your statement has indicated, is a matter of some importance to a considerable number of employees.

These employees, for reasons having to do with the nature of the FBI, are in the excepted service. The result, and an unintended one, to be sure, is that they cannot freely compete in the competitive service for jobs that may be there. I did obtain a pledge from Director William Sessions that when this unit moved the jobs of these employees, they could and would be given the opportunity to find jobs elsewhere in the FBI or related agencies.

When Director Sessions left without fulfilling that pledge, I of course moved to remind his successor, and to his credit, Mr. Freeh, Director Freeh, has made an effort to find places for these employees. I believe there are 1,200 of them.

All agree, I think, that it would be unconscionable to permit the Bureau to step back from the commitment it made to these employees. These employees, among those who simply cannot move or would be severely prejudiced if they did move, these are for the most part women whose income from their jobs is moderate, many of them are heads of households and simply do not have the mobility that many others have.

If they had, the jobs mean so much to them that they would of course have moved. What is left is Director Freeh's efforts on the one hand, and what I think must be assistance from the Congress because, as the Chairman has said, with the downsizing, I do not believe Mr. Freeh can do it alone.

I do believe, however, that H.R. 4884 does hold considerable promise if these employees can compete in the competitive service for the retention of jobs in the Federal Government.

I have another bill that will require priority consideration for people who lose their jobs as a result of downsizing. Although OPM is free to do this, I think this should be mandatory so that I think if an aggressive effort is made by Mr. Freeh and made by us to pass this legislation that we will not have an unintended result here, and that is that these employees be left high and dry.

I want to say once again how much I appreciate Chairman McCloskey's action in moving quickly to hear this legislation so as to do all within his power to remedy this situation.

Thank you very much, Mr. Chairman.

Mr. MCCLOSKEY. Thank you, Ms. Norton.

[The prepared statement of Hon. Eleanor Holmes Norton follows:]

PREPARED STATEMENT OF HON. ELEANOR HOLMES NORTON, A REPRESENTATIVE IN CONGRESS FROM THE DISTRICT OF COLUMIBA

I want to express my sincere thanks to Chairman Frank McCloskey for responding favorably and quickly to my request to hold a hearing on H.R. 4884, the Criminal Justice Information Services Placement Assistance Act. FBI employees are expected from the competitive service by law. As a result, their years with the government count for nothing when they seek consideration for competitive service positions at other agencies. H.R. 4884 would authorize noncompetitive career or career-conditional appointments in the competitive service for employees of the FBI's Criminal Justice Information Services Division [CJIS].

The CJIS Division is being relocated to Clarksburg, West Virginia over the next four years. However, over half of its employees in this area either cannot or do not wish to move there. This bill would make it easier for these employees to find other jobs with the Federal government in this area.

In 1991, I contacted former FBI Director William Sessions and expressed my concern about the fate of the employees who could not relocate. Director Sessions promised me personally that these employees would be afforded other jobs with the FBI in this area at a comparable rate of pay. This promise was not made lightly, but as a matter of elementary fairness to the employees, especially those not highly salaried whose personal and family position made it impossible to move. It was a promise repeated by Director Sessions and other Bureau officials in testimony before the House Subcommittee on Civil and Constitutional Rights in 1991 and 1992.

Last year, when it was first brought to my attention that Director Sessions was considering reneging on his commitment, thereby placing many employees at risk of losing their jobs, I immediately wrote him seeking assurances that his commitment still stood. Shortly thereafter, however, Director Sessions resigned and left his position without having replied. Once his successor, Director Louis Freeh, was in place, I wrote to him and sought assurance that Director Sessions' commitment would be honored. Director Freeh responded that due to the mandate to downsize and low attrition rates, it might not be possible for him to guarantee job security for Bureau employees, as promised by his predecessor.

Earlier this year, the Director and I corresponded further over this matter. I pointed out to him that I was unconvinced that the Bureau's commitment could not be met by using early-out authority along with buyouts to create openings to meet the employment needs of the CJIS employees. I further indicated to him that the House Report on the Commerce, Justice, State and Judiciary Appropriations Bill for Fiscal Year 1994 stated that the "Committee expects the Director to make every effort to fulfill this pledge to employees." He in turn wrote me in February and advised that there were 1,200 CJIS Division employees who do not desire to relocate, and that if they could not be placed in other positions, would be involuntarily separated beginning in fiscal year 1996.

Director Freeh indicated that he would aggressively seek to place these employees in vacancies occurring throughout the FBI, and offer skills enhancement training to increase their marketability. He is to be commended for these efforts. However, the Director also expressed an interest in pursuing further legislative remedies beyond buyouts and asked for my support in that regard. The CJIS Placement Assistance Act, is our response.

Mr. Chairman, it would be unconscionable to permit the Bureau to step back from a commitment which was not only made personally to me, but to a Subcommittee of the House. But present circumstances have constrained the Bureau's ability to fulfill the pledge. It cannot do it alone. Assistance from the Congress is needed, and, with the enactment of H.R. 4884, CJIS employees will get the additional help they needed to continue their careers competitively in the Federal service.

Again, I thank the chairman for his very fair consideration of the needs of these employees. I am pleased to welcome all of the witnesses.

Mr. MCCLOSKEY. Our concluding panel will be comprised of William H. Garvie, Chief, Resources Management Section, Criminal Justice Information Services, division of the Federal Bureau of Investigation, joined by Mr. Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management.

**STATEMENTS OF WILLIAM H. GARVIE, CHIEF, RESOURCES MANAGEMENT SECTION, CRIMINAL JUSTICE INFORMATION SERVICES DIVISION, FEDERAL BUREAU OF INVESTIGATIONS, ACCOMPANIED BY NANCY GORMONT, PERSONNEL ISSUES, HUMAN RESOURCES, FEDERAL BUREAU OF INVESTIGATIONS AND LEONARD R. KLEIN, ASSOCIATE DIRECTOR FOR CAREER ENTRY, OFFICE OF PERSONNEL MANAGEMENT**

Mr. GARVIE. Good morning. I have submitted my full statement for the record, and I have on my left with me this morning Nancy Gormont who is a 25-year veteran of the FBI working in personnel issues and currently working on the human resources with respect to this relocation.

Mr. MCCLOSKEY. Thank you, Mr. Garvie. Obviously both your statements will be accepted for the record. I want to welcome you. Thank you all for your patience while the other activities proceeded, and please proceed as you like.

Mr. GARVIE. OK. I have a few comments here, a brief summary of my statement. Mr. Chairman and members of the subcommittee, thank you for inviting me to discuss legislation that would offer a special appointment benefit to the FBI's Criminal Justice Information Services Division employees.

The FBI's revitalization and relocation project was initiated in 1990, based on dramatic changes that occurred between 1980 and 1989, including an attrition rate that had crept up to an all time high for the division which made recruiting and retaining a stable work force in the Washington, DC, area extremely difficult.

Early on in the project former Director Sessions demonstrated the FBI's dedication to ensure the needs and welfare of the division's approximately 2,800 employees was a foremost priority. The personnel relations group was hired to assist with employee issues relative to the relocation, and the former Director made a commitment that those employees of good standing who do not desire to relocate to West Virginia would be placed into positions elsewhere in the FBI.

The personnel relations group worked with the employees for four years supporting the FBI's human resources personnel, identifying and resolving both employee and West Virginia community concerns and issues.

Since the former Director's commitment, factors not known nor contemplated when the commitment was made have made it impractical. Those factors include the downsizing of the Federal Government, the sharp downturn in the economy in the early 1990's, the austere budget situation, and the resulting dramatic reduction in the FBI's attrition rate.

In February 1994 Director Freeh decided that the transition of the Criminal Justice Information Services division, we will call it CJIS, would follow a functional transition plan, that is moving functions on a scheduled basis, extending into 1999.

His decision included the aggressive placement of nonrelocating CJIS division employees and delaying any involuntary separations until the end of fiscal year 1996. Our estimates indicate that by the end of fiscal year 1999, there could be over 1,200 CJIS division employees who need to be placed or separated.

Since 1990 the FBI has pursued a diligent campaign to make employees more aware of opportunities that exist in West Virginia. These include, we had 1-day official business trips, bus trips, we had family weekend trips to West Virginia, we had various guest speakers on issues dealing with relocation assistance, stress, transition and change, and we had an African–American panel of West Virginia residents on the topic of West Virginia culture.

With very few exceptions, employees hired at FBI headquarters since October 1991 were brought on board under the condition that they must relocate to West Virginia. In March of this year Director Freeh mandated that with the exception of positions that require very specialized scientific or technical knowledge, all vacant positions at FBI headquarters, which included Washington metropolitan and Baltimore field offices would be filled where possible by CJIS division employees.

We established an even exchange program which facilitates the switching of employees between FBI headquarters divisions. This program gave employees outside the division an opportunity to relocate to West Virginia and CJIS division employees an opportunity to be assigned to positions that are not relocating.

The FBI contacted Federal, State, and local government agencies for job vacancy information and made this available to CJIS employees. We established a career transition program to provide the employees with means for a successful career transition, and through this program were gaining insight on training courses that will help our employees become more marketable in today's work force environment.

We arranged for representatives of the Office of Personnel Management to address the CJIS employees and supply information on how to go about applying for Federal Government positions outside the FBI. In September 1992, the FBI and the Department of Justice tried to get a waiver of competitive status for FBI employees so they could apply for other Department of Justice positions. This would have provided the Department of Justice with candidates who have significant work experience, knowledge, skills, and abilities easily transferrable to comparable positions within the Department, and offered another alternative to FBI employees not relocating to West Virginia.

At that time, the Office of Personnel Management indicated that they had no authority to waive the competitive status requirement to allow FBI employees to be noncompetitively appointed to positions in the competitive service. However, they agreed to conduct clerical testing at the FBI which gave hundreds of employees a rating that would qualify them to apply for a variety of entry level positions at GS–5 or below.

Recently the CJIS division employees were given the first opportunity within the FBI for Federal buyouts and 111 employees took advantage of this program. The FBI is interested in pursuing every possible course of action that could provide options to nonrelocating CJIS division employees that might encourage them to reconsider a move to West Virginia or assist them in finding placement opportunities or other placement alternatives.

The Criminal Justice Information Service's Placement Assistance Act, introduced by Ms. Norton, is a measure that, if enacted, would

further assist our employees who do not wish to relocate to West Virginia, but do wish to remain in public service.

If you have any questions, I would be happy to respond to them.

Mr. MCCLOSKEY. Thank you very much, Mr. Garvie.

[The prepared statement of Mr. Garvie follows:]

PREPARED STATEMENT OF WILLIAM H. GARVIE, CHIEF, RESOURCES MANAGEMENT SECTION, CRIMINAL JUSTICE INFORMATION SERVICES DIVISION, FEDERAL BUREAU OF INVESTIGATIONS

Mr. Chairman and members of the Subcommittee, I would like to take this opportunity to thank you for inviting me to discuss legislation that would offer a special appointment benefit to employees of the FBI's Criminal Justice Information Services Division.

The FBI's Revitalization and Relocation Project was initiated in the Identification Division (ID) in early 1990 based on dramatic changes that occurred in the ID between 1980 and 1989, which placed the Division in a crisis situation. These changes included the fact that attrition for the Division had climbed to an all time high (at one point 50 percent of new ID employees resigned within the first four years of employment); recruiting and retaining a stable work force in the Washington, D.C., area became more and more difficult; technological developments were stymied because of budget constraints; significant increases in fingerprint card receipts were noted and the existing system could not handle the strain; backlogs of work were developing; and users lost confidence in the ID's level of service.

In 1989, former Director Sessions acted to resolve the crisis facing the ID. He requested the National Crime Information Center (NCIC) Advisory Policy Board to establish an Identification Services Subcommittee. This Subcommittee developed a plan for "revitalizing" the ID centered around the development and implementation of a state-of-the-art Integrated Automated Fingerprint Identification System (IAFIS). Also, a feasibility study on relocating the ID was initiated to resolve the ID attrition and hiring problems by relocation.

In 1990, the FBI approved the Revitalization and Relocation plan and contracted with Smith, Hinchman and Grylls Associates (SH&G), Inc., Detroit, Michigan, to conduct a relocation site survey study and develop a design concept for a new facility. Congress appropriated $185 million for the relocation, and thorough and in-depth site surveys and evaluations identified a 986 acre location in Clarksburg, WV, as the most feasible to relocate the ID—among other factors, these results were based on:

Location within four hours of FBIHQ;
Access to good transportation—(roads, air);
A skilled and abundant work force;
University presence; and a
Reasonable cost-of-living.

In 1992, through a consolidation, the Criminal Justice Information Services (CJIS) Division assumed overall responsibility for the Revitalization and Relocation Project.

At the time the Revitalization and Relocation Project was in the early concept stages, former Director Sessions demonstrated the FBI's dedication to ensuring the needs and welfare of the employees was a foremost priority. The Arbor-Pollock Consulting Group, Inc., formerly known as The Arbor Consulting Group, Inc., was contracted to assist with employee issues relative to the relocation. Through their four years under contract, Arbor played a supportive role by working with FBI human resources personnel in identifying and resolving both employee and WV community concerns and issues.

Also in 1990, former FBI Director Sessions made a commitment to the ID employees, that those of good standing not desiring to relocate to WV would be placed into positions elsewhere in the FBI. Since that time, factors, not know nor contemplated when he made the commitment, have made it impractical. Primarily those factors are the downsizing of the Federal Government, the sharp downturn in the economy in the early '90s, the austere budget situation, and the dramatic reduction in the FBI's attrition rate. By the end of Fiscal Year (FY) 1999, if no action is taken, estimates indicate there would be over 1,200 CJIS Division employees who do not desire to relocate and, therefore, would need to be placed or separated.

On February 19, 1994, FBI Director Freeh approved a personnel transition/relocation plan for the CJIS Division which affords consideration for the employees and provides an orderly and manageable transfer of functions. The Director decided that the transition of the CJIS Division will follow a functional transition plan, moving

functions on a scheduled basis that may extend into the 1999. His decision included the aggressive placement of non-relocating CJIS Division employees and delaying any involuntary separations until the end of FY 1996. Director Freeh conveyed this plan to CJIS Division employees on March 7, 1994.

Though the FBI's reduced attrition rate and efforts to downsize many Headquarters operations will impact severely on our ability to find employment elsewhere in the FBI for employees who decide not to relocate to WV, Director Freeh announced in March that he is committed to do all that he can to minimize the numbers of employees who may be faced with involuntary separation. He also encourage CJIS Division personnel to give the move to WV serious thought.

Since 1990, our plans to relocate have included a diligent campaign to make employees more aware of opportunities that exist in WV, and our associates are continually encouraged to take advantage of all human resources programs including those tailored to promote relocation. Some programs have offered oneday official business bus trips and family weekend trips to WV, various guest speaker programs on issues dealing with relocation assistance, stress, transition and change, and an African-American panel of WV residents on the topic of WV Culture. In addition, an Employee Information Center was established to display volumes of information about WV to ensure our associates are well informed about all that WV has to offer in the way of housing, education, health and medical facilities, etc. As provided currently under Title 5, U.S.C., an offer of a relocation bonus may create a renewed interest in relocation to WV.

With minimal exceptions, all new CJIS Division employees hired at FBI Headquarters since October 1991, were brought on board with the understanding that their position would be relocating to WV. In addition, an Even Exchange Program was established which gives employees in other FBI Headquarters Divisions with an interest in moving to WV, an opportunity to do so by switching places with a CJIS Division employee who has the same position title and grade and does not want to move to WV.

In support of his plan for an aggressive employee placement program for those who choose not to relocate, Director Freeh mandated that, with the exception of positions that require very specialized scientific or technical knowledge, vacant position at FBI Headquarters (including the Washington Metropolitan and Baltimore Field Offices) will be filled, wherever possible, by CJIS Division personnel.

On June 6, 1994, the CJIS Division issued letters to approximately 500 employees including all State Identification Bureaus, National Crime Information Center and Uniform Crime Reporting contacts, and Police Departments and Sheriff's Offices in areas with a population of 100,000 or more. The purpose of these letters was to identify to those groups the fact that large numbers of CJIS Division associates may be looking for other employment opportunities, to establish a liaison point in this regard, and to gather information on job availability (including job postings) for display to CJIS Division associates. Since June, information on more than 100 positions nationwide has been received and made available to non-relocating personnel, and the FBI continues to receive new information on available jobs on a daily basis.

To assist our employees in their job search, on July 12, 1994, non-relocating CJIS Division employees were offered the opportunity to participate in a newly developed Career Transition Program that encompasses four phases: Career and Life Planning, Career Counseling, Job Search, and Personal Growth and Development Opportunities. The goal of this program is to provide the means for a successful career transition. Implementation of the Career Transition Program includes voluntary participation, priority scheduling for non-relocating employees impacted by the Functional Transition Plan, and individual and small group sessions, with no more than 50 persons per group. It is a program that we expect to continually offer through the transition years. The following provides the goals of all four phases of the Career Transition Program:

The Career and Life Planning phase will provide the opportunity for employees to assess their skills, values and interests, and to collect and organize information needed to make sound, career-related decisions.

The Career Counseling phase will provide assistance in occupational planning, decision-making, and job placement, and to link assessment information to factual data concerning career opportunities, skills, and resources.

The Job Search phase will provide information, models, and strategies for effectively obtaining and targeting the employees' next position externally or internally. This phase incorporates workshops on knowledge, skill, and abilities development, preparation of Standard Form 171, resumé and letter preparation, job search strategies.

The Personal Growth and Development Opportunities phase will provide the opportunity to explore internal/external resources, to enhance and implement participants' career goals.

Through the Career Transition Program we will gain new insight on training courses that will help develop CJIS Division personnel who are seeking jobs elsewhere within the FBI, with other government agencies, or private industry that will help them to become more marketable in today's workforce environment. Our Skills Enhancement Training (SET) Program is already being enhanced to provide a new Fall curriculum building on existing typing and word processing classes, expanding office automation training, and offering other more traditional basic skills (e.g., reading, composition, math, public speaking, etc.) The SET Program will continue to adjust offerings to the interests of our CJIS Division associates as noted through career counseling efforts.

In December 1991, the FBI arranged for representatives of the Office of Personnel Management (OPM) to address employees and supply information on how to go about applying for Federal Government positions outside the FBI. We hoped to do en masse testing, however, were informed that this was no longer done since they use a variety of tests to determine individual skills and abilities for various positions. OPM did, however, provided employees with information about what tests were needed for various positions, how to go about arranging for testing, and how to apply directly to an agency for a specific posted vacancy.

The FBI is not, however, limiting its job search internally. Many CJIS Division employees have expressed an interest in remaining in government positions. However, with most Federal, state, and local government agencies experiencing similar downsizing demands on budgetary constraints, few are hiring. In addition, the fact that the FBI is in the excepted service, when most other government agencies are in the competitive service and require applicants to have competitive status which is not attainable through their FBI employment, has complicated the process of looking for employment with other government agencies.

In September 1992, the FBI and the Department of Justice (DOJ) sought a waiver of competitive status for FBI employees to apply to DOJ positions, which could have provided DOJ with candidates who have significant work experience, knowledge, skills and abilities easily transferable to comparable positions within the Department, and offered another alternative to FBI employees not relocating to WV. OPM indicated that they have no authority to waive the competitive status requirement to allow FBI employees to be noncompetitively appointed to positions in the competitive service, but did offer to assist the FBI to schedule testing and referrals to agencies, as appropriate, for positions covered by OPM examinations. The FBI notes that the "Criminal Justice Information Services Placement Assistance Act" would waive the competitive status requirement. In September 1992, OPM agreed to conduct clerical testing at the FBI, and over 1,000 employees signed up to take the test, which give those employees a rating but only qualifies them to apply for a variety of clerical positions at GS 5 or below.

Recently, Director Freeh was able to offer CJIS Division personnel first consideration for voluntary separation buyout incentives based on the Federal Workforce Restructuring Act of 1994. The FBI was authorized to pay for 300 such incentives, and during our window of opportunity from June 6, 1994, through July 1, 1994, 111 CJIS Division employees took advantage of the buyout options. Of that figure, 80 voluntarily retired or took advantage of the early retirement option, with 31 others voluntarily resigning for a separation payment. The gross amount of their buyout payment was the amount of severance pay allowable under present regulations, or $25,000, whichever is less. The amount of severance pay would be one week's basic pay for each of the first 10 years of civilian service, plus two weeks' basic pay for each year over 10 years. An age adjustment allowance of 10 percent is added for each year you are over age 40 when you leave. No credit is given for military service unless the service interrupted otherwise creditable civilian service. If employees wait until such time as they are separated, they are entitled to severance pay as well as unemployment compensation. Eighty-seven employees from elsewhere at FBI Headquarters also took advantage of the buyout which created vacancies that may be filled by CJIS Division personnel.

The first new Special Agent appointments in over two years will initially be drawn from within the ranks of FBI employees, again creating the possibility for CJIS Division personnel to either become Special Agents or backfill support positions vacated by others who qualify for the Special Agent position.

In conclusion, the FBI is interested in pursuing every possible course of action that could provide options to non-relocating CJIS Division personnel that might encourage them to reconsider a move to WV or assist them in finding placement opportunities or other placement alternatives. The "Criminal Justice Information Services

Placement Assistance Act," introduced by Ms. Norton, is a measure that, if enacted, would further assist our employees who do not wish to relocate to WV but want to remain in public service. I would like to thank the Subcommittee for its interest concerning our efforts and its support of this measure.

Mr. MCCLOSKEY. Mr. Klein, do you care to make a statement?

Mr. KLEIN. Good morning, Mr. Chairman, Mrs. Norton. Thank you for inviting me to discuss the legislation that would provide a special appointment benefit to certain employees of the Federal Bureau of Investigation.

Specifically, the Criminal Justice Information Services Placement Assistance Act would permit the noncompetitive appointment to the competitive service positions of any employee who is involved in the FBI's Criminal Justice Information Services Division who are currently in the excepted service.

Employees covered by the bill are those whose jobs are being relocated from Washington, DC, to Clarksburg, WV, and who are not willing to move. The bill would make these individuals eligible for competitive service appointments elsewhere in the government as long as they meet the qualification requirements for the positions to which appointed, and the appointments occur before October 1, 1999.

The Office of Personnel Management has no objection to extending this benefit to the employees who will be losing their positions because of the relocation of the CJIS. While they are currently in the excepted service because of the statutory exclusion of all FBI employees from the competitive service, we recognize the relationship these individuals have to the FBI is substantively similar to competitive service employment.

They were hired with every expectation of serving a full career with the FBI. We hope that the Justice Department will be able to place many of these employees in the competitive service positions elsewhere in the Department before the effective date of the relocation.

Finally, because it is not certain when these jobs will be relocated or if they will be relocated simultaneously, we recommend replacing the September 30, 1999, deadline with a provision that the special appointment authority will expire two years from the date the employee is separated from the CJIS. This would ensure every employee an equitable period within which to find placement in the competitive service.

In addition, we recommend the bill be clarified to reflect that the noncompetitive appointment eligibility would apply only to those CJIS employees serving under permanent appointments.

I will be happy to answer any questions you may have.

Mr. MCCLOSKEY. Thank you very much, Mr. Klein.

[The prepared statement of Mr. Klein follows:]

PREPARED STATEMENT OF LEONARD R. KLEIN, ASSOCIATE DIRECTOR FOR CAREER ENTRY, OFFICE OF PERSONNEL MANAGEMENT

Mr. Chairman and members of the subcommittee; Thank you for inviting me to discuss legislation that would offer a special appointment benefit to certain employees of the Federal Bureau of Investigation. Specifically, the "Criminal Justice Information Services Placement Assistance Act" would permit the noncompetitive appointment to competitive service positions of certain employees of the FBI's Criminal Justice Information Services Division [CJIS], who are currently in the excepted service. Employees covered by the bill are those whose jobs are being relocated from

Washington, DC, to Clarksburg, WV, and who are not willing to move. The bill would make these individuals eligible for competitive service appointments elsewhere in the Government as long as they meet the qualification requirements for the positions to which appointed, and the appointments occur before October 1, 1999.

The Office of Personnel Management has no objection to extending this benefit to the employees who will be losing their jobs because of the relocation of the CJIS. While they are currently in the excepted service because of the statutory exclusion of all FBI employees from the competitive service, we recognize that the relationship these individuals have to the FBI is substantively similar to competitive service employment. They were hired with every expectation of serving a full career with the FBI. We hope that the Justice Department will be able to place many of these employees in competitive service positions elsewhere in the Department before the effective date of the relocation.

Finally, because it is not certain when these jobs will be relocated or if they will be relocated simultaneously, we recommend replacing the September 30, 1999, deadline with a provision that the special appointment authority will expire 2 years from the date the employee is separated from the CJIS. This would ensure each employee an equitable period within which to find placement in the competitive service. In addition, we recommend the bill be clarified to reflect that the noncompetitive appointment eligibility would apply only to those CJIS employees serving under permanent appointments.

If you have any questions, I would be happy to respond to them.

Mr. MCCLOSKEY. We have been joined by Mrs. Morella. Congresswoman Morella, do you have a statement you would like to make?

Mrs. MORELLA. An opening or a closing statement, Mr. Chairman? When you have a major markup and other meetings at the same time, it is hard to be at all places at all times, but this particular bill I am very pleased to note extending competitive status to employees of the FBI's criminal justice information service I don't think has any opponents, and I am proud to be a cosponsor of it, too, so I am pleased to see that the FBI is concerned for its employees and actively supporting the legislation.

I thank you, Mr. Chairman.

Mr. MCCLOSKEY. Thank you, Mrs. Morella.

Mrs. MORELLA. I will have an opening statement if you would allow me unanimous consent with regard to the first bill we considered.

Mr. MCCLOSKEY. Of course I will include it for the record without objection.

[The prepared statement of Hon. Constance A. Morella follows:]

PREPARED STATEMENT OF HON. CONSTANCE A. MORELLA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Chairman McCloskey, I am pleased to participate in this hearing addressing two pieces of legislation, basically dealing with individuals going from excepted service employment to competitive service.

I have gone through the testimony and I compliment the witnesses for their thorough preparation of rather a complicated and often emotional issue—the National Guard Technicians ability to receive full rights in insuring procedural fairness during adverse action proceedings. I am particularly grateful for a detailed explanation of the problem because I am aware of a wide gap in support of this legislation. The testimony on both sides of the issue is compelling. In fact, I am pleased to note that the sponsorship is by both the Majority Whip and the Minority Whip of the House of Representatives. On the other hand, there is pause for thought when one notes that G.V. "Sonny" Montgomery—a thirty five year veteran of the National Guards, in fact, a Major General (Ret.) of the Mississippi National Guard, is opposed to the legislation. I look forward to your presentation so that I can clarify the situation for myself.

I am pleased to note, however, that the bill extending competitive status to employees of the FBI's Criminal Justice Information Service [CJIS]—a bill that I am

proud to cosponsor—has no opponents. I am pleased to see that the FBI is concerned for its employees and actively supports that legislation.

Again, thank you, Mr. Chairman. I will have questions for the witnesses at the appropriate time.

Mr. MCCLOSKEY. Ms. Norton.

Ms. NORTON. Mr. Chairman, first to indicate just how broad the spectrum of employees affected is by the decision to move to West Virginia, let me give some indication of what we are dealing with, how serious.

I have 158 people in the District—at least this was as of February 1994, but I am by no means the Member with the most—and they come from already often fairly far out. Mr. Gilchrest has 123; Ms. Bentley has 92; Mr. Cardin has 138; Mr. Wynn has 538; Mr. Hoyer has 277; Mr. Bartlett has 20; Mr. Mfume has 198; Mrs. Morella has 37.

Let's move to Virginia. Mr. Bateman has 136; Mr. Scott has 5; Mr. Bliley has 7; Mr. Moran has 208; Mr. Wolf has 165; Miss Byrne has 53. I won't go further.

There are people affected from West Virginia and from Pennsylvania. The chairman, Chairman McCloskey, indicated that he wasn't sure that H.R. 4884 would do very much given the present downsizing going on in the government. I think he raises a point of realism that should be addressed.

Mr. Klein, do you believe that with the help of legislation we might be able to deal with employees in these numbers?

Mr. KLEIN. I think it will be a great help. It opens up far more jobs to these employees in the Washington community and surrounding areas particularly. The competitive service jobs far outnumber the excepted service, and I think this bill would open all the jobs to these people.

Now, most of them I understand are in clerical positions. Even though we are downsizing government, there is a fairly steady turnover of clerical jobs, so I think this will have some great benefit to them, we will have some opportunities for these people over the next several years.

Ms. NORTON. You make an important point. As I recall, clerical jobs were among those that got special pay incentives because the turnover is so great.

Mr. KLEIN. That is right. Typically of our hiring in the Federal service, about 40 percent of the jobs we hire, people we hire are clerical employees.

Ms. NORTON. You anticipate that, even with downsizing, the turnover will necessitate a fairly significant number of new hires or hires for clerical positions?

Mr. KLEIN. Oh, yes. It will diminish the numbers, but there will still be a fair proportion of jobs filled and particularly clerical jobs.

Ms. NORTON. Now, here we are dealing with people who look like competitive service workers, act like competitive service workers, have been in the government often for a long time.

Why could this not have been done administratively? Why are we here peddling a bill to get some relief for this many employees of the Federal Government who just happen to work for an agency that did not allow them in the competitive service?

Mr. KLEIN. My understanding, there was no statutory authority for OPM to do this unilaterally, and this bill will do that for us.

Ms. NORTON. So without statutory authority this was completely impossible?

Mr. KLEIN. That is my understanding.

Ms. NORTON. Did you get an opinion on that from your General Counsel?

Mr. KLEIN. Well, this testimony was cleared by our counsel.

Ms. NORTON. Yes, but that doesn't answer my question, which is a legal question, which is: Was this impossible to do without statutory authorization and has it ever been done? Has a waiver of this kind ever been done before?

Mr. KLEIN. The waiver, the only other waiver I am familiar with is the one that was passed on the Ramspeck Act that allows the same kind of authority for congressional employees who are terminated, that provides a 1-year noncompetitive eligibility for appointment. That is the only one I am familiar with.

Ms. NORTON. That was done via legislation?

Mr. KLEIN. Yes, it was.

Ms. NORTON. So even that took legislation?

Mr. KLEIN. That is correct.

Ms. NORTON. Now, why was not a waiver provided at the FBI's request for CJIS employees who applied for the positions, at least in the Department of Justice?

Mr. KLEIN. They could have, for other excepted positions, but for career positions, that was the——

Ms. NORTON. But here the FBI asked for a waiver, and you are saying it can't even be done intraagency?

Mr. KLEIN. That is correct.

Ms. NORTON. Could you tell us the number of—the number I used was 1,200. Is that still the number who have indicated they cannot or do not want to relocate? Is that the most current figure?

Mr. GARVIE. Ms. Norton, the numbers that are most current, we have 1,600 or 1,590 employees who have said no, they do not want to relocate to West Virginia.

We are looking at if our TSL, target staffing level stays at what it is right now, that we will be able to place about 400 of those employees through attrition, placing in other divisions, and still leaving that 1,200 that may have to be released at the end of 1999 or between now and 1999.

Ms. NORTON. I would be interested to know, because you have spoken, Mr. Garvie, about these actions such as bus trips and speakers and information centers for sometime now—do you have any figures to indicate that these activities on the part of the FBI have indeed had an effect on workers' relocation?

Mr. GARVIE. To be perfectly frank, I am a little bit disappointed in that, that it has not had the effect, that people have gone out and looked. We have had a lot of people go, in fact, we have a weekend trip coming up in another 2 weeks and we have 100 people signed up, 100 families signed up to go out there and look, but we don't see changes in our survey numbers.

We take surveys every 6 months, and our most recent survey we have reduced it down to people saying yes or no. Prior to that, we were letting them say maybe yes and maybe no. We took the may-

bes out, and we have seen not a whole lot of progress leaning toward the yeses.

Ms. NORTON. Now, has the fact that these employees work for the FBI helped in placing them in places like State and local law enforcement offices, or have you given any priority to State and local law enforcement offices?

Mr. GARVIE. Just recently, within the last 6 or 8 weeks, I sent out 500 letters to law enforcement agencies throughout the United States, and we received about 100 answers back.

They passed those letters around to other smaller agencies, and we have received probably 150 job opportunities, but the way I look at that, it is going to be a hit or miss because if an employee does not want to go to West Virginia, they probably don't want to go to some place in Missouri or Washington State or Indiana.

We are getting back a lot of different jobs, but they really—if they don't want to go 4 hours away——

Ms. NORTON. I am interested in the difference between buyout legislation, buyout incentives, and what I will now call layoff incentives in light of what we are doing in the Federal Government.

We of course are doing buyouts. They have been very successful thus far. In the DOD they were extremely successful. But the fact is, if you wait and get laid off, there is a considerable bonus, if you will, for doing so.

I would be interested in the answer of both of you because this is an OPM problem, too. Do you believe that the gap between what you get to be laid off and the gap with what you get to be bought out should be narrowed to encourage buyout when the government offers it, or is there any change you would make in that regard, or is it just the way it ought to be now?

Mr. GARVIE. Ms. Norton, if I could start off with that. Recently the Department of Justice offered the FBI 300 buyouts, and the Director gave first priority to those 300 buyouts to the CJIS division. We had 111 employees take the buyouts, and surprisingly enough not very many at the low level where we have a large majority of employees who took the buyout.

Ms. NORTON. You mean not surprisingly given that you are offering $10,000 or less, as I understand it?

Mr. GARVIE. Right. Because those employees, if they waited to get terminated, like you just mentioned, would get more money through the termination than they would through the buyout, so we were very interested in having an amount of money with the buyout that would be more so than the amount of money that they are getting through the normal buyout, having a minimum amount, say $10,000.

Many of our employees are only eligible for $2,000 and $3,000 and $4,000 in a buyout, and it is not enough money to leave, low-graded employees.

Ms. NORTON. There was no action that could be taken to sweeten that pot for the—if I were a worker like this and you all hadn't done any better by me than you have, I would really wait you out and risk unemployment, and if I were the Federal Government and behaving rationally knowing, the first thing I would do is calculate how much I would pay you if you were leaving by layoff and try to come up a little bit and save myself some money.

Is there no way for the government to do that, Mr. Klein?

Mr. KLEIN. No, ma'am, there is not. I think the gentleman stated the situation accurately. It is more profitable, if you can use that term, for an employee to wait to be separated because the severance pay would be more than the amount we can offer in a normal buyout. We don't currently have the statutory authority to offer other kinds of buyouts or layoff bonuses.

Ms. NORTON. What do you think about the gap, the first question I asked, between the two?

Mr. KLEIN. Well, I think that would be something that would have a more far ranging effect on other agencies.

Ms. NORTON. I am asking it as a general question because I think that we are going to find that as time passes on, there are going to be people—I don't know what the figures are now—but there are obviously going to be people in Federal agencies that figure it out, too, and instead of waiting for buyouts, as everybody was doing before, they will be waiting for layoffs.

Mr. KLEIN. Yes, yes. I am afraid I can't speak to that for my agency, but we would be happy to look into that and give you some sort of reply in a statement.

Ms. NORTON. I wish you would. Thank you, Mr. Chairman.

[The information referred to follows:]

Public Law 103–226, the Federal Workforce Restructuring Act of 1994, gives Executive branch agencies broad authority to offer voluntary separation incentive payments "buyouts," to Federal employees who volunteer to separate from the agency in order to avoid the involuntary separation of other employees. The final amount of the buyout is equivalent to the amount of an employee's severance pay or $25,000, whichever is less.

Mrs. Norton is concerned that lower grade Federal employees may not accept a buyout but wait until they are terminated because they could receive more money if laid off. She wants to know what can be done to alleviate this concern so these employees would have a financial incentive to leave the Federal Government voluntarily and not have to wait for layoffs. Of particular interest is the Federal Bureau of Investigation's (FBI) suggestion to permit the FBI to have its own buyout authority which would include a minimum buyout amount that employees would receive even if their severance pay amounts were lower.

We agree with Mrs. Norton that under Public Law 103–226 lower grade employees would receive a smaller buyout amount since the buyout is equivalent to the amount of severance pay an employee would receive if laid off. The buyout and severance pay amount is calculated by salary, age, and years of service. As Mrs. Norton points out, these lower grade employees could receive more money if terminated because, in addition to severance pay, they would be eligible for unemployment compensation.

Employees who take a buyout under Public Law 103–226 receive one lump-sum payment. As stated earlier, OPM does not have the statutory authority to offer other kinds of layoff bonuses or buyouts, such as a minimum buyout amount suggested by the FBI. However, we do not agree with the FBI's proposal. We feel that passing legislation for individual agencies which would permit them to have separate buyout authorities so they may offer minimum buyout amounts would be more detrimental to the entire Federal workforce than having a few employees wait until termination because they may receive a little more money.

If an agency was authorized individual buyout authority and could set a minimum amount, we believe that more Federal employees would stay on the Federal Government's payroll to see what would happen in their particular agency. For example, if an Agency was granted an individual buyout authority but decided not to set a minimum, employees would still wait to see if the agency would change its mind. In addition, if one agency were to set a minimum buyout amount, employees in other agencies would wait to see if their agency was going to pursue legislation for its own buyout authority and then wait to see if the agency would set a minimum amount. We believe that more employees would stay on the rolls of the Federal Government, thus increasing involuntary separations. This is directly contrary to the Administration's reduction objectives.

Public Law 103–226 grants Executive agencies across the board authority to offer buyouts without the need for pursuing additional legislation to offer more or different incentives. We believe that Public Law 103–226 meets the needs of Executive agencies and will effectively facilitate the achievement of the Administration's Federal workforce restructuring goals.

Mr. MCCLOSKEY. Thank you, Ms. Norton.

Mrs. Morella.

Mrs. MORELLA. No questions.

Mr. MCCLOSKEY. Obviously Ms. Norton's legislation is getting strong support and I think her leadership and diligence is to be commended. I look forward to a markup soon in moving this.

I want to thank our witnesses. You have been very helpful. I also neglected to state for the record that I believe we have three congressional statements that have been accepted, Congressman Montgomery, Congressman Burton, and also Congressman Pat Williams.

[The prepared statements of Hon. G.V. (Sonny) Montgomery and Hon. Pat Williams follow:]

PREPARED STATEMENT OF HON. G.V. (SONNY) MONTGOMERY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Thank you Mr. Chairman for holding this hearing and for inviting me to submit a statement for the record concerning this proposal.

The proposal as I understand it would make National Guard civilian technicians part of the Competitive Civil Service program. This in effect would take control of the technicians within the State away from the adjutants general and the Governors. This infringes on the constitutional authority of the States to supervise the militia (now the National Guard) by appointing the officers and to supervise the training according to the discipline prescribed by Congress.

Prior to 1968, technicians were, by and large, State employees. They were made nominal Federal employees in order to provide a uniform pay and retirement system and other fringe benefits. The National Guard Technicians Act of 1968 was not intended to make technicians like other Federal employees. The technicians were and still are administered, hired and fired by purely State officials, the state adjutants general. Technicians are generally administered under civil service systems and rules, as a condition of Federal funding for the national guard.

The National Guard Technicians Act of 1968 commented on the compromise nature of the act because it was very clear to the crafters that the State could not be denied the authority over the technicians. Since 1968, the courts have recognized this delicate balance concerning these employees. The 1968 act was carefully constructed to account for the interests of the individuals, the military requirements and the Constitutional prerogatives of the States. To do any different would divide control and undermine the discipline, the military chain of command, and the authority of the adjutants general over their respective national guards.

Imposing an outside Federal Agency over the adjutant general would not contribute to the efficient operation of the military organization.

On a practical level, I have seen no evidence that the adjutants general are not managing technicians in a fair, impartial and effective manner. In other words, if it ain't broke, don't fix it. This system is not broke and has in fact been working very well for 25 years. I urge you to keep the system as it is.

Thank you for this opportunity to submit this statement.

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PREPARED STATEMENT OF HON. PAT WILLIAMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mister Chairman, members of the Committee, I appreciate this opportunity to discuss the issue of competitive Civil Service status for the civilian technicians of our National Guard.

I support granting technicians competitive status, and I hope this committee will reach the same conclusion. Essentially, I believe, the issue before you is one of the most basic and fundamental worker fairness for thousands of men and women who labor as civilian technicians. Their livelihoods and careers depend upon being treat-

ed equitably and even-handedly, yet the statutes and regulations under which they work do not assure them that measure of fairness.

The 1968 Technician Act asserted the National Guard civilian technicians, the same as competitive service employees, should be safeguarded for termination based on false claims of misconduct or poor performance. And similar to the statute affecting competitive service employees, the 1968 Technicians Act set the standard for terminations for performance or conduct at "for cause."

Ironically, the 1968 Act did not go ahead and extend to technicians those well-recognized and effective procedures and processes of post-termination evidentiary hearings by neutral hearing officers, which competitive service employees rely upon to make sure terminations are not arbitrary and are not based on false information.

I believe it is time to close that loophole and extend to technicians the same assurance of a fair and objective process when their livelihoods depend upon the outcome.

Some have questioned whether somehow the effectiveness or readiness of the National Guard would be affected or impaired. Mister Chairman, I believe that precisely the opposite will be the case. The commitment and service of the civilian technicians is strong and demonstrable. Extending them the assurance of our very best efforts surely can only enhance and bolster their morale and dedication. From top to bottom the National Guard will be well served, and I appreciate your giving this matter the close attention it merits. Thank you very much.

Mrs. MORELLA. Mr. Chairman, I ask for unanimous consent that a letter that was sent by the Association of Civilian Technicians of the Detroit Area Chapter be included in the record. It is on the National Guard civilian technicians bill.

Mr. MCCLOSKEY. Without objection, so ordered. The hearing is adjourned.

[The letter from the Association of Civilian Technicians follows:]

ASSOCIATION OF CIVILIAN TECHNICIANS,
DETROIT AREA CHAPTER,
*Selfridge ANGB, MI, August 1, 1994.*

Hon. CONSTANCE MORELLA,
*U.S. House of Representatives,*
*Washington, DC.*

DEAR REPRESENTATIVE MORELLA: I am writing to express my support of changing the employment status of the National Guard Civilian Technicians.

In September of 1993, there was an attempt to place an amendment on H.R. 2401, the Department of Defense Appropriations bill, concerning the National Guard Technicians, The Bonior/Gingrich Amendment. Congress defeated the amendment 256 to 156, because of misleading information. We hope that you will reconsider your thinking on this issue, we understand that you voted no in September 1993.

We, the Civilian Technicians of the National Guard, do not want special rights or anything of this nature. We do want the same protections and respect given to Postal employees, IRS employees and all other federal employees. I strongly believe that civilian employees of the National Guard be made part of the competitive service. If the employment status of these National Guard employees changed, it would provide comprehensive solutions to several employment inequities faced by civilian technicians with respect to our rights as federal employees. The change in employment status would not undermine the role of the State's Adjutants General in administering National Guard personnel.

We the employees of the National Guard Civilian Technician workforce are not second class citizens even though we are treated this way, with regard to employment status, worker protection and basic employment rights. We deserve better. Someday we will achieve the equality afforded to all other Federal employees. The hearing you are about to hold is a step in the right direction. Once the hearing has concluded and the committee goes over all the testimony and evidence presented. I know that we shall achieve our basic rights as National Guard Civilian Technicians.

I submit this letter of support, for inclusion in the record, to Chairman McCloskey and the members of the committee.

We the members of the Association of Civilian Technicians appreciate your continued and loyal support for the Technician program.

Sincerely,

HENRY L. RYAN.

[Whereupon, at 12:03 p.m., the subcommittee was adjourned.]

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ISBN 0-16-046427-7